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Iraq 2003: Preventive War was the Best Option

by
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Table of Contents

Table of Contents	i
ABSTRACT	ii
Introduction	1
Chapter 1 - LEGAL ARGUMENT	6
Humanitarian Argument	6
Self Defence	11
United Nations Resolutions	15
Legal Conclusions	26
Chapter 2 – THE OTHER OPTIONS	29
Containment	29
Element 1 – Destruction of Extant Capability	30
Element 2 – Long Term Monitoring	35
Element 3 – Sanctions	37
Element 4 – Enforcement	41
Costs of Containment	44
Summary and Overall Prognosis	54
Deterrence	55
Condition 1 – Effective Detection	56
Condition 2 – Credible Threat of Punishment	59
Costs of Deterrence	62
Chapter 3 – PREEMPTIVE AND PREVENTIVE WAR	65
Preemptive War	66
Discussion	66
Prognosis	68
Preventive War	69
1 st Criterion – Gross Human Rights Violations	71
2 nd Criterion – Evidence of WMD	72
3 rd Criterion – Close Ties With Terrorist Organizations	76
4 th Criterion - International Judgment And Approval	78
A Time to Act	80
CONCLUSION	85
BIBLIOGRAPHY	89

ABSTRACT

In March 2003, the United States led a “Coalition of the Willing” to remove the threat posed by Saddam Hussein and his regime in Iraq. Although termed a Preemptive war by many, this war was in fact a Preventive war initiated to effect regime change. The United States provided a number of justifications for the war including the threat of Weapons of Mass Destruction, the humanitarian crisis in Iraq, and the enforcement of United Nations’ Security Council resolutions. This war was initiated after 12 years of sanctions and strategies of containment and deterrence. During this period, Saddam disobeyed numerous Security Council resolutions, refused to disarm, killed thousands of his countrymen, ruined the Iraqi economy, impoverished its population, supported terrorists, and divided the coalition against him through the offer of lucrative economic contracts. While countries such as France and Russia were gaining economic favors, the United States and its allies were left enforcing sanctions and resolutions with no potential end state as long as Saddam remained in power.

This analysis of Preventive war in Iraq considers both the legality and legitimacy of the invasion and regime change. It demonstrates that although Preventive war had the potential of being the riskiest option, it was also the option that offered the greatest potential rewards of greater peace and security, as well as relief from tyranny. It was, in fact, the only option that provided any potential reward.

Introduction

Saddam has now established, permanently and by his own doing, that he can never be trusted, and that no agreement with him now or in the future has any realistic hope of being observed. There is no longer a credible way to envision any peaceful road to Iraqi disarmament. If Saddam were to open his warehouses, destroy his nuclear, chemical, and biological programs, and sign a pledge never to seek such weapons again, it would not be enough. He has pledged and promised and agreed, and then reneged, so many times that only the most trusting (or cynical) diplomats would encourage him to play and win such a pointless game one more time.

- Thomas M. Nichols¹

It was under the authority of the United Nations Charter that the world decided to act to restore peace in the Persian Gulf after Saddam Hussein invaded and occupied Kuwait in August 1990.² On the same day that Iraq invaded Kuwait, the United Nations Security Council adopted Security Council Resolution (SCR) 660³ demanding that, under Chapter VII, Iraq “withdraw immediately and unconditionally all its forces” from Kuwait.⁴ SCR 660 led to a number of subsequent resolutions that imposed embargos on Iraq and seized Iraqi assets throughout the world. By November 1990, it was apparent that lesser actions short of armed conflict would not result in the restoration of Kuwait territory and the United Nations Security Council authorized ‘all necessary means’ to

¹ Thomas M. Nichols, “Just War, Not Prevention,” *Ethics & International Affairs* 17, no. 1 (2003): 26-27. Thomas Nichols is also the author of *Winning the World: The Cold War’s Lessons for America’s Future* (2000).

² James P. Terry, *The Regulation of International Coercion: Legal Authorities and Political Constraints* (Newport: Naval War College Press, 2005), 81.

³ United Nations Security Council, “Resolution 660,” <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/575/10/IMG/NR057510.pdf?OpenElement>; Internet; accessed 13 April, 2006.

⁴ James P. Terry, *The Regulation of International Coercion: Legal Authorities and Political Constraints* (Newport: Naval War College Press, 2005), 81

enforce its previous resolutions for Iraq to withdraw from Kuwait.⁵ Specifically, SCR 678 of 29 November 1990:

Authorizes Member States co-operating with the Government of Kuwait, unless Iraq on or before 15 January 1991 fully implements, as set forth in paragraph 1 above, the above-mentioned resolutions, to use all necessary means to uphold and implement resolutions 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area.⁶

With the failure of Saddam to adhere to the requirements of Resolution 660 by 15 January 1991, the United States' led coalition began military operations. Operation Desert Storm succeeded in defeating Iraqi forces and removing them from Kuwait. On 3 April 1991, SCR 687 was adopted marking the end to formal hostilities, subject to Iraq's compliance with certain requirements that were deemed prerequisites to the establishment of peace and security in the area.⁷ These requirements demanded the disarmament of Saddam's regime to include the destruction and / or removal of all weapons of mass destruction (WMD). At the time it was believed that Saddam would adhere to the requirements of SCR 687 and disarm. Unfortunately, almost twelve years after the end of the first Gulf War, peace and security had not been restored in the area due to Saddam's refusal to disarm and the reluctance of the international community to demonstrate resolve.

⁵ James P. Terry, *The Regulation of International Coercion: Legal Authorities and Political Constraints* (Newport: Naval War College Press, 2005), 81

⁶ United Nations Security Council, "Resolution 678," <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/575/28/IMG/NR057528.pdf?OpenElement>; Internet; accessed; 9 April, 2006.

⁷ United Nations Security Council, "Resolution 687," <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/596/23/IMG/NR059623.pdf?OpenElement>; Internet; accessed; 9 April, 2006.

The attacks of 11 September, 2001⁸ were a hard lesson for the United States. 9/11 clearly demonstrated that the continental United States was vulnerable and could be attacked at any time. President George W. Bush put it clearly when he said, “when the enemy hit us, they changed the whole concept of risk.”⁹ The attackers did not need massive armies, armadas or bombers. This new threat was not peer nations but non-state actors hidden amongst the civilian population who could use a set of box cutters to commandeer civilian aircraft and fly them into buildings killing thousands. The massive American military machine could do little against this threat once it reached the United States. Rather, this threat had to be destroyed at its source including its sources of support. This became clear in President Bush’s address to the United Nations on 10 November 2001, when he stated, “for every regime that sponsors terror, there is a price to be paid. And it will be paid. The allies of terror are equally guilty of murder and equally accountable to justice.”¹⁰ In the case of 9/11, the source of the threat was Osama Bin Laden and the organization that he led, al Qaeda. Osama Bin Laden and his organization enjoyed the safe haven provided by the Taliban Regime in Afghanistan, so when the United States led a “Coalition of the Willing” to oust the Taliban, the United Nations, and most nations around the world, supported this action.

When the United States began speaking of removing the Iraqi regime of Saddam Hussein it did not enjoy the same level of support that it did with the intent to remove the

⁸ Hereafter referred to as 9/11.

⁹ United States, The White House, “President's Priorities: National Security, Homeland Security, Economic Security,” <http://www.whitehouse.gov/news/releases/2002/08/20020814-1.html>; Internet; accessed 9 September 2005.

¹⁰ United States, The White House, “President Bush Speaks to United Nations,” <http://www.whitehouse.gov/news/releases/2001/11/20011110-3.html>; Internet; accessed 13 April, 2006.

Taliban in Afghanistan. Iraq had not attacked the United States nor was there any conclusive evidence that Saddam had anything to do with the attacks of 9/11.¹¹ Many nations, political analysts, academics and individuals throughout the world believed an invasion of Iraq would be illegal under international law and wanted to continue other means short of war to deal with the regime of Saddam Hussein. In March 2003, despite the reduced international support, the United States again led a “Coalition of the Willing” in Operation Iraqi Freedom to remove Saddam from power.¹²

The American decision to proceed with Operation Iraqi Freedom has generated a great deal of international and national debate over the legality and legitimacy of Preventive war and its use in Iraq. This paper will demonstrate that the American led invasion, and subsequent regime change, was a legitimate, courageous and necessary application of Preventive war. In order to understand this debate, Chapter 1 will review the legality of the invasion and the limitations that international law has imbedded within its application. Chapter 2 will review the strategies employed by the United Nations and the United States to deal with Iraq between the Gulf War and the decision to proceed with regime change. This review will include an analysis of the strategies of containment and deterrence as well as provide a prognosis for their potential future success. This chapter will conclude with an examination of the costs of pursuing these strategies over the 12 year period, 1991-2003. Chapter 3 will clarify the difference between Preemptive and Preventive war before submitting the Preventive option to a legitimacy test provided by

¹¹ Ron Huisken, *The Road to War On Iraq* (Canberra: Strategic and Defence Studies Centre, Australian National University, 2003), 6.

¹² John Keegan, *The Iraq War* (Toronto: Key Porter Books, 2004), 127.

Irving Brecher.¹³ Finally, this chapter will highlight both the benefits and risks associated with this strategy.

This paper examines the American decision to proceed with Preventive war in Iraq, not the conduct of the war itself, or the post conflict issues. Further, this analysis is based on the situation and factors as they were in 2002/2003, not on how they appear in 20/20 hindsight in 2006.

¹³ Irving Brecher, "In Defence of Preventive War: A Canadian Perspective," <http://proquest.umi.com/pqdweb?index=65&did=545429131&SrchMode=1&sid=26&Fmt=3&VInst=PROD&VType=PQD&RQT=309&VName=PQD&TS=1137976831&clientId=1711>; Internet: accessed 14 April, 2006. Irving Brecher's most recent article, "Terrorism, Freedom, and Social Justice," appeared in *International Journal* (winter 2001-2002). He was also the editor of *Human Rights Development and Foreign Policy: Canadian Perspectives* (Halifax: Institute for Research on Public Policy 1989); and the co-editor (with Donald J. Savoie) of *Equity and Efficiency in Economic Development: Essays in Honour of Benjamin Higgings* (Montreal & Kingston: McGill-Queen's University Press 1992).

Chapter 1 - LEGAL ARGUMENT

While it is nearly impossible to achieve a definitive answer on the legality of use of force in international law, it is necessary for the purposes of this paper to provide a valid legal argument in support of the invasion of Iraq in 2003. The legal case for the invasion can be made on three grounds that will be explained in this chapter. These grounds are: (1) Humanitarian intervention based on Saddam's mistreatment of the Iraqi population; (2) The assertion of self-defence which is based in customary law predating the Charter of the United Nations; and (3) Iraq's failure to abide by the requirements of the cease fire agreement embodied in United Nations Security Council resolutions. Each of these grounds will be briefly reviewed.

Humanitarian Argument

James P. Terry¹⁴ asserts that the two main purposes of the United Nations Charter are the maintenance of peace and security (including prohibitions on the use of force) and the protection of human rights.¹⁵ The promotion and encouragement of human rights and fundamental freedoms are embodied in the Preamble, Article 1 and Article 55 of the Charter.¹⁶

¹⁴ James P. Terry, *The Regulation of International Coercion: Legal Authorities and Political Constraints* (Newport: Naval War College Press, 2005), 147. Until 2005, James P. Terry served as the Principle Deputy Assistant Secretary of State in the Bureau of Legislative Affairs. During previous service with the Marine Corps he was a legal counsel to the Joint Chiefs of Staff (1992-1995), a military judge, and a chief trial counsel for Naval Legal Services. He has over 20 years as a judge advocate and is widely published in the areas of national security law and coercion control.

¹⁵ James P. Terry, *The Regulation of International Coercion: Legal Authorities and Political Constraints* (Newport: Naval War College Press, 2005), 101.

In considering Saddam's Ba'ath Regime, it is clear that human rights of Iraqi citizens had been, and continued to be, violated. Prior to 1991, these violations received only limited international attention due, in some part, to the fact that Saddam's regime refused to allow independent monitoring of human rights abuses within Iraq.¹⁷ This changed with the end of the First Gulf War when international organizations gained access to huge amounts of captured documentary evidence and first hand accounts of victims. This evidence provided detailed records of Saddam's campaign to "empty the Kurdish countryside", his brutality towards dissidents, the harsh conduct of security agencies, and the "disappearance" of thousands of Kurds.¹⁸

The presence of the international community and human rights organizations within Iraq did not stop Saddam's violations. In suppressing the Kurdish rebellion in 1991, Saddam's Republican Guard and regular soldiers made no effort to limit civilian casualties and, in some cases, specifically targeted civilians.¹⁹ A refugee from Najaf explained:

People were told on the loudspeakers to evacuate the city, for their own safety, within 24 hours and head north, in the direction of Karbala. When thousands of people had gathered in the northern outskirts of the city_ it was afternoon already, around 3 o'clock, and they were mostly women and children_ helicopters opened fire from machine guns at them. Between 250 and 300 were killed.²⁰

¹⁶ Canada, Department of National Defence, B-GG-005-027/AF-022 *Collection of Documents on the Law of Armed Conflict* (Ottawa: DND Canada, 2005), 62, 67.

¹⁷ Human Rights Watch, "Iraq and Occupied Kuwait," http://www.hrw.org/reports/1992/WR92/MEW1-02.htm#P209_89569; Internet; accessed 13 April, 2006.

¹⁸ Human Rights Watch, "Iraq and Occupied Kuwait," http://www.hrw.org/reports/1992/WR92/MEW1-02.htm#P209_89569; Internet; accessed 13 April, 2006.

¹⁹ Human Rights Watch, "Iraq and Occupied Kuwait," http://www.hrw.org/reports/1992/WR92/MEW1-02.htm#P209_89569; Internet; accessed 13 April, 2006.

²⁰ Human Rights Watch, "Iraq and Occupied Kuwait," http://www.hrw.org/reports/1992/WR92/MEW1-02.htm#P209_89569; Internet; accessed 13 April, 2006.

In the period between 1991 and 2003 Saddam's regime continued its human rights abuses. A 1999 Amnesty International report stated that, "Gross human rights violations are systematically taking place in Iraq. They range from arbitrary arrest and detention, to torture, extrajudicial executions after summary trials, "disappearances", and forcible expulsions on the basis of ethnic origin."²¹ The Human Rights Watch World Report 2002 on Iraq and Iraqi Kurdistan, began with the statement that "The Iraqi government of President Saddam Hussein perpetrated widespread and gross human rights violations, . . ."²² The 2003 Human Rights Watch World Report on Iraq and Iraqi Kurdistan provided a similar assessment of Iraq's terrible record.²³ Such assessments demonstrated that Saddam was a "supreme enemy of human rights"²⁴ who was able to continue his abuses despite 12 years of United Nations sanctions, condemnation and diplomatic efforts.

These human rights violations meet the requirements for humanitarian intervention under pre-Charter law.²⁵ The United Nations, having noted these violations and their potential threat to international peace in numerous documents including SCR 688,²⁶ was prevented from taking substantive action to resolve this situation due to

²¹ Amnesty International, "Iraq: Victims of International Repression," [http://web.amnesty.org/library/pdf/MDE140101999ENGLISH/\\$File/MDE1401099.pdf](http://web.amnesty.org/library/pdf/MDE140101999ENGLISH/$File/MDE1401099.pdf); Internet; accessed 13 April, 2006.

²² Human Rights Watch, "World Report 2002: Iraq and Iraqi Kurdistan," <http://hrw.org/wr2k2/mena4.html>; Internet; accessed 13 April, 2006.

²³ Human Rights Watch, "World Report 2003: Iraq and Iraqi Kurdistan," <http://www.hrw.org/wr2k3/mideast4.html>; Internet; accessed 13 April, 2006.

²⁴ Nichols, Thomas M. "Just War, Not Prevention." *Ethics & International Affairs* 17, no. 1 (2003): 26.

²⁵ James P. Terry, *The Regulation of International Coercion: Legal Authorities and Political Constraints* (Newport: Naval War College Press, 2005), 101-102.

conflicting agendas within the organization. While efforts at diplomacy and debates about sovereignty and non-intervention were ongoing, the Iraqi population suffered terribly at the hands of a brutal regime. This, according to James Terry, was contrary to Charter values.²⁷

The argument can be made that there was precedent for the case of humanitarian intervention in the form of post-conflict support by the United Nations for NATO actions in Kosovo. NATO nations, knowing that Russia and China would veto any Security Council resolution authorizing the use of force in Kosovo, took the decision to conduct a “collective humanitarian intervention” in the “common interest” without formal United Nations approval.²⁸ The legality and credibility for this action was subsequently provided by the “ratification” of SCR 1244²⁹ after the cessation of large scale hostilities.³⁰

The 2003 United States led invasion of Iraq was similar to the Kosovo situation. There was widespread humanitarian abuse that threatened peace and stability and the

²⁶ United Nations Security Council, “Resolution 688,” <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/596/24/IMG/NR059624.pdf?OpenElement>; Internet; accessed 13 April, 2006.

²⁷ James P. Terry, *The Regulation of International Coercion: Legal Authorities and Political Constraints* (Newport: Naval War College Press, 2005), 103. “. . . Where diplomacy fails and egregious human rights violations are observed, the international community must not be allowed to excuse its failure to act by pre-Charter references to principles of nonintervention and sovereign immunity or to the Charter requirement for Security Council approval when the lack of approval is contrary to the values for which the Charter stands.”

²⁸ Louis Henkin, “Kosovo and the Law of “Humanitarian Intervention,”” *The American Journal of International Law* 93, iss 4 (Oct, 1999): 826.

²⁹ United Nations Security Council, “Resolution 1244,” <http://daccessdds.un.org/doc/UNDOC/GEN/N99/172/89/PDF/N9917289.pdf?OpenElement>; Internet; accessed 13 April, 2006.

³⁰ Louis Henkin, “Kosovo and the Law of “Humanitarian Intervention,”” *The American Journal of International Law* 93, iss 4 (Oct, 1999): 827.

United Nations was unable to act militarily to continuing violations.³¹ The difference was that it was an American led “Coalition of the Willing” that conducted the invasion, vice a regional power. Despite this difference, legality and credibility for the use of force in Iraq was provided in the ratification of SCR 1483 after the cessation of major combat.³² This resolution recognized the, “. . . specific authorities, responsibilities and obligations under applicable international law of these states [United States and the United Kingdom of Great Britain and Northern Ireland] as occupying powers under unified command (the “Authority”).³³

While there are critics of this legal basis for intervention in Iraq there remains a legal case. Saddam was a tyrant with a consistent record of human rights abuses and the United Nations, despite 12 years of effort, was not able to stop him. The United States led coalition stopped the abuses by Saddam while it has maintained the territorial integrity of Iraq and allowed political independence through democratic elections. The fact that, like Kosovo, the United Nations Security Council ratified a resolution ‘endorsing’ the act after the fact acknowledges that, although there is no formal agreement or change in the law with regard to humanitarian intervention, there is at the very least an acceptance that intervention consistent with Charter values will be endorsed and not condemned.³⁴

³¹ James P. Terry, *The Regulation of International Coercion: Legal Authorities and Political Constraints* (Newport: Naval War College Press, 2005), 98.

³² James P. Terry, *The Regulation of International Coercion: Legal Authorities and Political Constraints* (Newport: Naval War College Press, 2005), 103.

³³ United Nations Security Council, “Resolution 1483,” <http://daccessdds.un.org/doc/UNDOC/GEN/N03/368/53/PDF/N0336853.pdf?OpenElement>; Internet; accessed 13 April, 2006.

Self Defence

Christopher Anglim, in his book, *The Iraq War (2003): A Documentary Legal History*, proclaims that “. . . international law permitted the use of force against Iraq in anticipatory self-defence because of the threat posed by an Iraq armed with weapons of mass destruction and in potential cooperation with international terrorist organizations.”³⁵ It is the combination of rogue state and support for terrorist organization that tips the balance in favour of anticipatory self-defence.

Article 51 of the United Nation’s Charter states that, “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a member of the United Nations . . .”³⁶ General Sir Hugh Beach argues that the use of the word “inherent” in Article 51 establishes that the right of self defence has a basis in international law that pre-dates the Charter.³⁷ His view is that the Charter seeks to impose restrictions on the use of self defence by stating that it applies

³⁴ James P. Terry, *The Regulation of International Coercion: Legal Authorities and Political Constraints* (Newport: Naval War College Press, 2005), 103.

³⁵ Christopher T. Anglim, *The Iraq War (2003): A Documentary Legal History (Volume 1)*, (Buffalo: William S. Hein & Co., 2004), 231.

³⁶ Canada, Department of National Defence, B-GG-005-027/AF-022 *Collection of Documents on the Law of Armed Conflict* (Ottawa: DND Canada, 2005), 66.

³⁷ General Sir Hugh Beach, *The Concept of ‘Preventive War’: Old Wine in a New Wineskin*, Contemporary Essays, The Occasional Number 47 (United Kingdom: Strategic and Combat Studies Institute, 2004), 62. General Sir Hugh Beach writes extensively on military matters and arms control.

only until the Security Council has acted to re-establish peace and security.³⁸ Since the Security Council often does not act, he believes this article to be rather “utopian”.³⁹

Although the criteria for self defence in the United Nations Charter includes the requirement that it may only be used after an armed attack occurs, there is customary law that allows for preemptive self-defence. The limits to the rights of preemptive self-defence are set out in the Caroline Criteria.⁴⁰ Since the Caroline incident of 1837, the necessity for any preemptive attack has been seen to rest upon the imminence of the threat.⁴¹

Arnold Wolfers in his article “National Security as an Ambiguous Symbol”, states that “. . . the chance of future attack never can be measured “objectively”; it must always remain a matter of subjective evaluation and speculation” and that “. . . the attitude and behavior of those from whom the threat emanates are of prime importance.”⁴² In 2002, President Bush summarized the United States’ concerns with respect to Iraq:

. . . the threat from Iraq stands alone -- because it gathers the most serious dangers of our age in one place. Iraq's weapons of mass destruction are controlled by a murderous tyrant who has already used chemical weapons to kill thousands of people. This same tyrant has

³⁸ General Sir Hugh Beach, *The Concept of ‘Preventive War’: Old Wine in a New Wineskin*, Contemporary Essays, The Occasional Number 47 (United Kingdom: Strategic and Combat Studies Institute, 2004), 62.

³⁹ General Sir Hugh Beach, *The Concept of ‘Preventive War’: Old Wine in a New Wineskin*, Contemporary Essays, The Occasional Number 47 (United Kingdom: Strategic and Combat Studies Institute, 2004), 62.

⁴⁰ General Sir Hugh Beach, *The Concept of ‘Preventive War’: Old Wine in a New Wineskin*, Contemporary Essays, The Occasional Number 47 (United Kingdom: Strategic and Combat Studies Institute, 2004), 63.

⁴¹ General Sir Hugh Beach, *The Concept of ‘Preventive War’: Old Wine in a New Wineskin*, Contemporary Essays, The Occasional Number 47 (United Kingdom: Strategic and Combat Studies Institute, 2004), 63.

⁴² Arnold Wolfers, “‘National Security’ As An Ambiguous Symbol,” in *National and International Security*, ed. Michael Sheehan, 3-24 (Aldershot, Burlington VT: Ashgate, 2000), 7.

tried to dominate the Middle East, has invaded and brutally occupied a small neighbor, has struck other nations without warning, and holds an unrelenting hostility toward the United States⁴³

Determining how dangerous and how immediate or imminent a threat is remains a subjective decision that will be influenced by a nation's willingness to live with danger and its ability to deal with threat. 9/11 demonstrated to the United States that the immediacy criteria could not be based solely on previously accepted notions of an imminent threat. The 2002 United States National Security Strategy highlighted this assertion by stating:

We must adapt the concept of imminent threat to the capabilities and objectives of today's adversaries. . . The greater the threat, the greater is the risk of inaction – and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy's attack.”⁴⁴

Christopher Anglim asserts that there are three factors beyond imminence that must also be considered when using force in anticipatory self-defence. The first factor is whether a nation possesses WMD and whether it has the inclination to use them.⁴⁵ In the case of Iraq in 2003, most of the world believed Saddam had WMD and his previous use of chemical weapons in the Iran/Iraq war, as well as on his own Kurdish population, demonstrated a clear inclination for their use.⁴⁶

⁴³ United States, The White House, “President Bush Outlines Iraqi Threat Outlines Iraqi Threat,” <http://www.whitehouse.gov/news/releases/2002/10/20021007-8.html>; Internet; accessed 9 September 2005.

⁴⁴ United States, The White House, “The National Security Strategy of the United States of America (September 2002),” <http://www.whitehouse.gov/nsc/nss.html>; Internet; accessed 9 September, 2005. This interpretation of ‘imminence’ leads to the potential of preventive vice preemptive action. This issue is discussed in Chapter 3 of this paper.

⁴⁵ Christopher T. Anglim, *The Iraq War (2003): A Documentary Legal History (Volume 1)*, (Buffalo: William S. Hein & Co., 2004), 231.

The second factor is the available window of opportunity. Since terrorist threats are largely unforecasted and exceptionally difficult to detect, it may be necessary to act before the threat fully develops.⁴⁷ Despite the restrictions of numerous United Nations resolutions, and the work of the United Nations Special Commission on Iraq (UNSCOM) and the United Nations Monitoring, Verification and Inspection Commission for Iraq (UNMOVIC), Iraq had never been declared free of WMD. It was believed that Saddam was continuing to pursue WMD, and, although he was not tied to the events of 9/11, he did have significant contact with terrorist organizations.⁴⁸

The third factor to take into account was the degree of harm resulting from an attack by a weapon or WMD.⁴⁹ The harm that Saddam could cause with a WMD would be catastrophic. For example, should Iraq detonate nuclear weapons in the oilfields of its neighbors the resultant impact on the world economy would be devastating, and could cause an economic disaster comparable to the Great Depression of the 1930s.⁵⁰ Thus, the window of opportunity to act was before Saddam achieved a nuclear capability and before he could pass off WMD to terrorist organizations.

In the case of the United States' perception of Iraq, it was not up to France, Germany or even the United Nations to decide how America perceived the threat. This

⁴⁶ Christopher T. Anglim, *The Iraq War (2003): A Documentary Legal History (Volume 1)*, (Buffalo: William S. Hein & Co., 2004), 231.

⁴⁷ Christopher T. Anglim, *The Iraq War (2003): A Documentary Legal History (Volume 1)*, (Buffalo: William S. Hein & Co., 2004), 231.

⁴⁸ Lawrence F. Kaplan and William Kristol, *The War Over Iraq: Saddam's Tyranny and America's Mission* (San Francisco: Encounter Books, 2003), 24-26.

⁴⁹ Christopher T. Anglim, *The Iraq War (2003): A Documentary Legal History (Volume 1)*, (Buffalo: William S. Hein & Co., 2004), 232.

⁵⁰ Kenneth M. Pollack, *The Threatening Storm: The Case for Invading Iraq* (New York: Random House, 2002), 273.

was for the United States to decide for itself. 9/11 had significantly reduced the United States' threshold for threats and it was not prepared to wait and accept another blow before reacting. Other nations, for various reasons, did not perceive a significant threat or, if they did perceive a threat, did not feel a need to act immediately. This was their decision, but for the United States there was an immediate threat whose removal could be effected within legal constraints.

United Nations Resolutions

The final, and strongest legal argument for the invasion of Iraq lies in Iraq's failure to implement the terms of the cease fire that suspended hostilities of the 1991 Gulf War.⁵¹ The authority to use armed force in the 1991 Gulf War was provided in SCR 678 of 29 November, 1990.⁵² Christopher Greenwood asserts that this resolution remained in effect after the suspension of hostilities in 1991 because it did not limit the coalition to the liberation of Kuwait.⁵³ This resolution also authorized the coalition to use force for the broader goal of restoring "international peace and security in the area".⁵⁴ It is also

⁵¹ Christopher T. Anglim, *The Iraq War (2003): A Documentary Legal History (Volume 1)*, (Buffalo: William S. Hein & Co., 2004), 230.

⁵² General Sir Hugh Beach, *The Concept of 'Preventive War': Old Wine in a New Wineskin*, Contemporary Essays, The Occasional Number 47 (United Kingdom: Strategic and Combat Studies Institute, 2004), 67.

⁵³ Christopher Greenwood QC, *Britain's War With Saddam Had the Law on its Side*, Contemporary Essays, The Occasional Number 47 (United Kingdom: Strategic and Combat Studies Institute, 2004), 57-58. Professor Greenwood's publications include: contributing articles in British Year Book of International Law, International and Comparative Law Quarterly and SCSJ No 4 – command and the Laws of Armed Conflict.

⁵⁴ United Nations Security Council, "Resolution 678," <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/575/28/IMG/NR057528.pdf?OpenElement>; Internet; accessed; 9 April, 2006.

important to note that the Security Council never repealed SCR 678, leaving the option open for legal military action should Iraq violate the terms of the cease fire.⁵⁵

SCR 687 laid out a detailed list of requirements that Iraq had to meet as part of the cessation of hostilities. From its adoption in 1991 until the United States led invasion in March 2003, Iraq consistently breached the requirements of this, and 15 other resolutions listed in the table below:

Table 1 – Iraqi Violated United Nations Resolutions

United Nations Security Council Resolution	Details
<p style="text-align: center;">678 (November 29, 1990)</p>	<ul style="list-style-type: none"> • Iraq must comply fully with UNSCR 660 (regarding Iraq's illegal invasion of Kuwait) "and all subsequent relevant resolutions." • Authorizes UN Member States "to use all necessary means to uphold and implement resolution 660 and all subsequent relevant resolutions and to restore international peace and security in the area."
<p style="text-align: center;">686 (March 2, 1991)</p>	<ul style="list-style-type: none"> • Iraq must release prisoners detained during the Gulf War. • Iraq must return Kuwaiti property seized during the Gulf War. • Iraq must accept liability under international law for damages from its illegal invasion of Kuwait.
<p style="text-align: center;">688 (April 5, 1991)</p>	<ul style="list-style-type: none"> • "Condemns" repression of Iraqi civilian population, "the consequences of which threaten international peace and security." • Iraq must immediately end repression of its civilian population. • Iraq must allow immediate access to international

⁵⁵ Christopher Greenwood QC, *Britain's War With Saddam Had the Law on its Side*, Contemporary Essays, The Occasional Number 47 (United Kingdom: Strategic and Combat Studies Institute, 2004), 58.

United Nations Security Council Resolution	Details
	humanitarian organizations to those in need of assistance.
<p style="text-align: center;">707 (August 15, 1991)</p>	<ul style="list-style-type: none"> • "Condemns" Iraq's "serious violation" of UNSCR 687. • "Further condemns" Iraq's noncompliance with IAEA and its obligations under the Nuclear Non-Proliferation Treaty. • Iraq must halt nuclear activities of all kinds until the Security Council deems Iraq in full compliance. • Iraq must make a full, final and complete disclosure of all aspects of its weapons of mass destruction and missile programs. • Iraq must allow UN and IAEA inspectors immediate, unconditional and unrestricted access. • Iraq must cease attempts to conceal or move weapons of mass destruction, and related materials and facilities. • Iraq must allow UN and IAEA inspectors to conduct inspection flights throughout Iraq. • Iraq must provide transportation, medical and logistical support for UN and IAEA inspectors.
<p style="text-align: center;">715 (October 11, 1991)</p>	<ul style="list-style-type: none"> • Iraq must cooperate fully with UN and IAEA inspectors.
<p style="text-align: center;">949 (October 15, 1994)</p>	<ul style="list-style-type: none"> • "Condemns" Iraq's recent military deployments toward Kuwait. • Iraq must not utilize its military or other forces in a hostile manner to threaten its neighbors or UN operations in Iraq. • Iraq must cooperate fully with UN weapons inspectors. • Iraq must not enhance its military capability in southern Iraq.

United Nations Security Council Resolution	Details
<p>1051 (March 27, 1996)</p>	<ul style="list-style-type: none"> • Iraq must report shipments of dual-use items related to weapons of mass destruction to the UN and IAEA. • Iraq must cooperate fully with UN and IAEA inspectors and allow immediate, unconditional and unrestricted access
<p>1060 (June 12, 1996)</p>	<ul style="list-style-type: none"> • "Deplores" Iraq's refusal to allow access to UN inspectors and Iraq's "clear violations" of previous UN resolutions. • Iraq must cooperate fully with UN weapons inspectors and allow immediate, unconditional and unrestricted access.
<p>1115 (June 21, 1997)</p>	<ul style="list-style-type: none"> • "Condemns repeated refusal of Iraqi authorities to allow access" to UN inspectors, which constitutes a "clear and flagrant violation" of UNSCR 687, 707, 715, and 1060. • Iraq must cooperate fully with UN weapons inspectors and allow immediate, unconditional and unrestricted access. • Iraq must give immediate, unconditional and unrestricted access to Iraqi officials whom UN inspectors want to interview.
<p>1134 (October 23, 1997)</p>	<ul style="list-style-type: none"> • "Condemns repeated refusal of Iraqi authorities to allow access" to UN inspectors, which constitutes a "flagrant violation" of UNSCR 687, 707, 715, and 1060. • Iraq must cooperate fully with UN weapons inspectors and allow immediate, unconditional and unrestricted access. • Iraq must give immediate, unconditional and unrestricted access to Iraqi officials whom UN inspectors want to interview.

United Nations Security Council Resolution	Details
<p>1137 (November 12, 1997)</p>	<ul style="list-style-type: none"> • "Condemns the continued violations by Iraq" of previous UN resolutions, including its "implicit threat to the safety of" aircraft operated by UN inspectors and its tampering with UN inspector monitoring equipment. • Reaffirms Iraq's responsibility to ensure the safety of UN inspectors. • Iraq must cooperate fully with UN weapons inspectors and allow immediate, unconditional and unrestricted access.
<p>1154 (March 2, 1998)</p>	<ul style="list-style-type: none"> • Iraq must cooperate fully with UN and IAEA weapons inspectors and allow immediate, unconditional and unrestricted access, and notes that any violation would have the "severest consequences for Iraq."
<p>1194 (September 9, 1998)</p>	<ul style="list-style-type: none"> • "Condemns the decision by Iraq of 5 August 1998 to suspend cooperation with" UN and IAEA inspectors, which constitutes "a totally unacceptable contravention" of its obligations under UNSCR 687, 707, 715, 1060, 1115, and 1154. • Iraq must cooperate fully with UN and IAEA weapons inspectors, and allow immediate, unconditional and unrestricted access.
<p>1205 (November 5, 1998)</p>	<ul style="list-style-type: none"> • "Condemns the decision by Iraq of 31 October 1998 to cease cooperation" with UN inspectors as "a flagrant violation" of UNSCR 687 and other resolutions. • Iraq must provide "immediate, complete and unconditional cooperation" with UN and IAEA inspectors.
<p>1284</p>	<ul style="list-style-type: none"> • Created the United Nations Monitoring, Verification and Inspections Commission (UNMOVIC) to replace previous weapon

United Nations Security Council Resolution	Details
(December 17, 1999)	inspection team (UNSCOM). <ul style="list-style-type: none"> • Iraq must allow UNMOVIC "immediate, unconditional and unrestricted access" to Iraqi officials and facilities. • Iraq must fulfill its commitment to return Gulf War prisoners. • Calls on Iraq to distribute humanitarian goods and medical supplies to its people and address the needs of vulnerable Iraqis without discrimination.

Source: United States, The Whitehouse, "A Decade of Deception and Defiance: Saddam Hussein's Defiance of the United Nations," <http://www.whitehouse.gov/infocus/iraq/decade/book.html>; Internet; accessed 9 September, 2005.

In fact, of the twenty six demands made by the Security Council on Iraq since 1991, Iraq complied with only three.⁵⁶ Most significantly is that, 12 years after the 1991 Gulf War, it was not possible to definitely ascertain the status of Saddam's WMD programs or confidence in their destruction. For a variety of reasons that will be discussed later, the United States and its Coalition continued with a policy of containment and deterrence and used limited air strikes to signal displeasure with more serious Iraqi transgressions. After 9/11, this strategy changed and the United States Administration became much more focused on removing the threat posed by Iraq's WMD. The United States demonstrated its renewed focus by building up its forces in the Persian Gulf. This 'enabled' the Security Council to unanimously adopt SCR 1441.⁵⁷ It should be noted that

⁵⁶ James P. Terry, *The Regulation of International Coercion: Legal Authorities and Political Constraints* (Newport: Naval War College Press, 2005), 93.

⁵⁷United Nations Security Council, "Resolution 1441," <http://daccessdds.un.org/doc/UNDOC/GEN/N02/682/26/PDF/N0268226.pdf?OpenElement>; Internet; accessed 17 September, 2005. The United Nations Security Council voted 15 to 0 to adopt SCR 1441 on 8 November, 2002.

the United States did not require this resolution since Iraq's "material breach" of SCR 687 offered the entitlement by coalition forces to reopen hostilities under the Hague Regulations of 1907.⁵⁸ In the words of Michael Ignatieff,

The exercise of securing Security Council legitimacy was a matter not of obtaining permission but of establishing good faith, to document the crucial fact that the use of American power was being contemplated only after a decade of attempts to disarm Saddam Hussein by other means.⁵⁹

What SCR 1441 did was temporarily prevent the coalition from taking action for a period of time to allow Iraq "a final opportunity to comply" with the applicable resolutions.⁶⁰ If Iraq were to be found in "material breach" of this resolution then the option of resuming hostilities with Iraq would again be available.⁶¹

The assessment of Iraq's compliance with SCR 1441 would be provided by the head of UNMOVIC, Hans Blix and the head of the International Atomic Energy Agency (IAEA), Mohamad ElBaradei. In his initial report to the Security Council in December 2002, Blix stated that, ". . . Iraq's declaration [of its weapons program] has failed to provide an adequate account of Baghdad's nuclear, chemical and biological arms

⁵⁸ Mark Drumbl, et al, "Self-Defence in an Age of Terrorism," <http://proquest.umi.com/pqdweb?index=1&did=500642221&SrchMode=1&sid=2&Fmt=3&VInst=PROD&VType=PQD&RQT=309&VName=PQD&TS=1145675059&clientId=1711>; Internet; accessed 14 April, 2006.

⁵⁹ Michael Ignatieff, "The Challenges of American Imperial Power," *Naval War College Review* 56, iss. 2 (Spring 2003): 62. Michael Ignatieff's scholarly books include: *Human Rights as Politics and Idolatry* (2001), *The Rights Revolution* (2000), *Virtual War: Kosovo and Beyond* (2000), and *The Warrior's Honor: Ethnic War and Modern Conscience* (1998).

⁶⁰ United Nations Security Council, "Resolution 1441," <http://daccessdds.un.org/doc/UNDOC/GEN/N02/682/26/PDF/N0268226.pdf?OpenElement>; Internet; accessed 17 September, 2005. Paragraph 2.

⁶¹ Christopher Greenwood QC, *Britain's War With Saddam Had the Law on its Side*, Contemporary Essays, The Occasional Number 47 (United Kingdom: Strategic and Combat Studies Institute, 2004), 58-59.

programmes[sic].”⁶² As required by SCR 1441, Blix provided an update to the Security Council 60 days after the resumption of inspections. In this 27 January 2003 report he stated, “Iraq appears not to have come to a genuine acceptance – not even today – of the disarmament which was demanded of it and which it needs to carry out to win the confidence of the world and to live in peace.”⁶³ He acknowledged in this same speech that, despite some signs of greater cooperation, Iraq had failed to meet the requirement of complete compliance in accordance with SCR 1441.⁶⁴ Blix’s choice of words also supported United States’ assertions that Iraq remained a threat. Specifically, Blix stated with regards to:

Table 2 – Excerpts of Hans Blix’s January 2003 Report to the United Nations

Chemical Weapons	“They [a number of 122mm chemical rocket warheads found in a relatively new bunker] could also be the tip of a submerged iceberg. The discovery of a few rockets does not resolve but rather points to the issue of several thousands of chemical rockets that are unaccounted for.”
Biological Weapons	“There are strong indications that Iraq produced more anthrax than it declared and that at least some of this was retained after the declared destruction date. It might still exist. . . I note that

⁶² United Nations News Center, “Security Council Decides to Hold Further Talks on Iraqi Arms Dossier in Early January,” <http://www.un.org/apps/news/storyAr.asp?NewsID=5710&Cr=iraq&Cr1=inspect>; Internet; accessed 12 April, 2006.

⁶³ Hans Blix, “The Status of Iraqi Inspections: A Game of Hide and Seek,” *Vital Speeches of the Day* 69, no. 9 (Feb 15, 2003): 265.

⁶⁴ Christopher T. Anglim, *The Iraq War (2003): A Documentary Legal History (Volume 1)*, (Buffalo: William S. Hein & Co., 2004), 99.

	the quantity of media [an undeclared 650 kgs of bacterial growth] would suffice to produce, for example, about 5000 litres of concentrated anthrax.”
Missiles	“There remain significant questions as to whether Iraq retained SCUD-type missiles after the Gulf War. . . These missiles [Al Samoud 2 and Al Fatah with proscribed ranges and diameters] might well represent prima facie cases of proscribed items.”
Documents	“. . . we cannot help but think the case [finding 3000 pages of documents relating to laser enrichment of uranium in a private home] might not be isolated and that such placements of documents is deliberate to make discovery difficult and to seek to shield documents by placing them in private homes.”

Source: Hans Blix, “The Status of Iraqi Inspections: A Game of Hide and Seek,” *Vital Speeches of the Day* 69, no. 9 (Feb 15, 2003): 267-269.

On 14 February 2003, Hans Blix provided a subsequent progress report to the Security Council where he identified that, in 11 weeks of work, UNMOVIC had conducted more than 400 inspections of over 300 sites and had found only a small number of proscribed items.⁶⁵ Blix noted that this was not proof that the proscribed programs or weapons did not exist, but rather that they were not located in the areas inspected. To emphasize this point, Hans Blix stated,

Another matter - and one of great significance - is that many proscribed weapons and items are not accounted for. . . One must not jump to the conclusion that they exist. However, that possibility is also not excluded.

⁶⁵ Hans Blix, United Nations, “Disarming Iraq: Briefing of the Security Council 14 February, 2003,” <http://www.un.org/apps/news/infocusnewsiraq.asp?NewsID=382&sID=6>; Internet; accessed 14 April, 2006.

If they exist, they should be presented for destruction. If they do not exist, credible evidence to that effect should be presented.⁶⁶

In providing his 12th quarterly report of UNMOVIC to the Security Council on 7 March 2003, Hans Blix clearly identified that Iraq had not met the fundamental requirements of SCR 1441. Specifically, he stated that,

It is obvious that, while the numerous initiatives, which are now taken by the Iraqi side with a view to resolving some long-standing open disarmament issues, can be seen as "active", or even "proactive", these initiatives 3-4 months into the new resolution cannot be said to constitute "immediate" cooperation. Nor do they necessarily cover all areas of relevance.⁶⁷

In conjunction with UNMOVIC's report to the Security Council on 7 March, Hans Blix provided a "working document" with greater detail on Iraq's unresolved disarmament issues.⁶⁸ A synopsis is included in the table below.

Table 3 – Synopsis of Unresolved Iraqi Disarmament Issues

CLUSTER	UNRESLOVED MATTERS
Missile Clusters	<ul style="list-style-type: none"> - Scud type missiles - SA-2 Missile Technology - Research and development on ballistic missiles capable of proscribed ranges - FROG (Luna) Special Warheads - Development of solid propellant missile systems before and after the Gulf War
Munitions and Other Delivery Means Clusters	<ul style="list-style-type: none"> - Scud type Biological and Chemical warheads - R-400 and R-400A Bombs - Major Aerial Bombs

⁶⁶ United Nations, Hans Blix, "Disarming Iraq: Briefing of the Security Council 14 February, 2003," <http://www.un.org/apps/news/infocusnewsiraq.asp?NewsID=382&sID=6>; Internet; accessed 14 April, 2006.

⁶⁷ United Nations, Hans Blix, "Disarming Iraq: Briefing to the Security Council 7 March, 2003," <http://www.un.org/apps/news/infocusnewsiraq.asp?NewsID=414&sID=6>; Internet; accessed 14 April, 2006.

⁶⁸ United Nations, Hans Blix, "Disarming Iraq: Briefing to the Security Council 7 March, 2003," <http://www.un.org/apps/news/infocusnewsiraq.asp?NewsID=414&sID=6>; Internet; accessed 14 April, 2006.

CLUSTER	UNRESLOVED MATTERS
	<ul style="list-style-type: none"> - Major Rockets and Artillery Projectiles - Spray devices and Remotely Piloted Vehicles - Other Chemical and Biological munitions
Chemical Clusters	<ul style="list-style-type: none"> - Tabun - Sarin and Cyclosarin - Mustard - VX - Major Chemical Process Equipment - Soman - BZ Analogues (psychoactive compounds)
Biological Clusters	<ul style="list-style-type: none"> - Anthrax - Botulinum Toxin - Mycotoxins: Aflatoxin and Trichothecenes - Wheat cover smut - Clostridium perfringens - Ricin - Undeclared BW agents - Drying of BW agents - Bacterial BW agent production - Genetic Engineering and Viral Research - BW Agent simulants

Source: United Nations, UNMOVIC, “Unresolved Disarmament Issues – Iraq’s Proscribed Weapons Programs,” http://www.nti.org/db/profiles/iraq/fulltext/unmovic_jan6.pdf; Internet; accessed 7 March, 2006.

While acknowledging areas of Iraqi improvement in cooperation, Blix’s reports to the United Nations did not remove the fact that Baghdad remained in ‘material breach’ of Security Council resolutions. These reports were very much in line with previous ones from weapons inspectors and demonstrated that the United States did not fabricate the WMD threat, as many alleged after the Iraq War. Despite the best efforts of UNSCOM and UNMOVIC to verify Iraq’s disarmament of proscribed weapons and materials, they were not able to do so. Instead, they provided a picture of an Iraq that was not as cooperative as it should be and who, despite the ability to do so, would not produce the proof or clarification required to confirm disarmament. This led to most member states of the United Nations, and most academics to believe, by the Spring of 2003, that Iraq still held some WMD capabilities. As James P. Rubin explains, “. . . most of the

underlying information that led most intelligence agencies to conclude Iraq had and was hiding chemical and biological weapons originally came from UN inspectors.”⁶⁹ Based on this belief, Saddam remained in ‘material breach’ of SCR 687 as well as SCR 1441, thus allowing the resumption of hostilities against him.

Legal Conclusions

This chapter has provided three legal arguments in support of the 2003 invasion of Iraq. The humanitarian abuses of Saddam’s regime were well documented and the threat of WMD and terrorist connections were sufficient cause for action. The argument with respect to Security Council resolutions had been used to support coalition use of force in response to Iraqi ‘material breaches’ since 1991.⁷⁰ The unanimous adoption of SCR 1441 further supported the legal case for war in that it clearly stated that Iraq remained in ‘material breach’ of SCR 687 and the subsequent UNMOVIC and IAEA reports only served to reinforce this point. Even the French, who were officially strong opponents to the war, reportedly let the United States know, through unofficial diplomatic channels, that the Security Council should be by-passed since they agreed that SCR 1441 was sufficient to justify war.⁷¹ The only reason the United States even

⁶⁹ James P. Rubin, “Stumbling Into War: A Diplomatic Postmortem,” *Foreign Affairs* 82, no. 5 (September/October, 2003): 64. James P. Rubin was Assistant Secretary of State for Public Affairs from 1997 to 2000.

⁷⁰ Thomas M. Nichols, “Just War, Not Prevention,” *Ethics & International Affairs* 17, no. 1 (2003): 27.

⁷¹ James P. Rubin, “Stumbling Into War: A Diplomatic Postmortem,” *Foreign Affairs* 82, no. 5 (September/October, 2003): 54.

considered a second resolution was to satisfy British Prime Minister Tony Blair who was concerned with domestic political perceptions.⁷²

As with most legal issues, there are also arguments supporting the opposite view alleging the unlawfulness of the invasion. This dichotomy simply highlights the fact that the legality of the invasion of Iraq cannot, and will not ever, be decided in a court of law because the international community does not have a court to which this matter could be referred for resolution.⁷³ This illustrates that clarity in International Law is especially difficult to achieve, thus allowing nations to “adopt whatever rules they choose; and, of course, they can abrogate them whenever it is in their interest to do so”.⁷⁴ This statement on the limitations of international law applies to all nations and not just the United States. A case in point is that while some nations were accusing the United States of “abrogating” international rules in invading Iraq, they were continuing to abrogate other United Nations rules in conducting illegal trade with Iraq. Specifically, Paragraph 5, Article 2 of Chapter 1 of the United Nations Charter states that “all Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.”⁷⁵ It will be demonstrated

⁷² James P. Rubin, “Stumbling Into War: A Diplomatic Postmortem,” *Foreign Affairs* 82, no. 5 (September/October, 2003): 53-54. Prime Minister Blair believed that a second resolution would improve his political situation in the United Kingdom.

⁷³ David R. Wingfield, “Why the Invasion of Iraq was Lawful,” <http://proquest.umi.com/pqdweb?index=9&did=506074521&SrchMode=1&sid=1&Fmt=3&VInst=PROD&VType=PQD&RQT=309&VName=PQD&TS=1139238931&clientId=1711>; Internet; accessed 14 January, 2006. It is acknowledged that the International Court of Justice does exist, however, it can only decide disputes that the concerned states agree be submitted to it.

⁷⁴ Paul Christopher, *The Ethics Of War And Peace: An introduction To Legal And Moral Issues*, 3rd ed. (New Jersey: Pearson Prentice Hall, 2004), 107.

subsequently that some of the most vocal nations in the ‘illegal war’ camp were actually in violation of this article of the United Nations Charter through their circumvention of trade sanctions against Iraq.

David Wingfield has stated that the United States “should not be prevented from acting in accordance with its security needs by appeals to international law if it can make a rational case of legality.”⁷⁶ This ‘rational case’ for the war in Iraq was provided through the valid arguments of: Iraqi violation of Security Council resolutions preventing the ‘restoration of peace and security in the area’⁷⁷; Self Defence based on the WMD threat and ties to terrorist organizations; and the requirement for Humanitarian Intervention to restore peace and security within the area. In the end, however, “. . . the debate over the Iraq war was, and continues to be, a debate over who is to be master of the interpretation of Security Council resolutions – those that used force or those countries that oppose the use of force.”⁷⁸

⁷⁵ Canada, Department of National Defence, B-GG-005-027/AF-022 *Collection of Documents on the Law of Armed Conflict* (Ottawa: DND Canada, 2005), 63.

⁷⁶David R. Wingfield, “Why the Invasion of Iraq was Lawful,” <http://proquest.umi.com/pqdweb?index=9&did=506074521&SrchMode=1&sid=1&Fmt=3&VInst=PROD&VType=POD&RQT=309&VName=POD&TS=1139238931&clientId=1711>; Internet; accessed 14 January, 2006. David Wingfield is a Toronto lawyer with a MA in international relations.

⁷⁷ United Nations Security Council. “Resolution 678.” <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/575/28/IMG/NR057528.pdf?OpenElement>; Internet; accessed; 9 April, 2006.

⁷⁸ David R. Wingfield, “Why the Invasion of Iraq was Lawful,” <http://proquest.umi.com/pqdweb?index=9&did=506074521&SrchMode=1&sid=1&Fmt=3&VInst=PROD&VType=POD&RQT=309&VName=POD&TS=1139238931&clientId=1711>; Internet; accessed 14 January, 2006.

Chapter 2 – THE OTHER OPTIONS

Although there had been a legal basis for the resumption of war in the period from 1991 to 2001, the United States and other members of the United Nations were content to adopt policies of economic sanctions, containment and deterrence to keep Iraq in check.⁷⁹ The attacks of 9/11, however, resulted in the United States reconsidering its approach to the continued threat posed by Saddam Hussein and his regime in Iraq. Other nations, for various reasons, did not feel as threatened and would have preferred a continuation of the containment and / or deterrent strategies. This chapter will consider these two strategies and assess both their potential for success as well as the costs of their implementation.

Containment

Containment, as a strategy, had its origins in the early years of the Cold War. It was first articulated by George F. Kennan in a telegram and, later in 1947, in a *Foreign Affairs* article entitled, “The Sources of Soviet Conduct”.⁸⁰ George Kennan argued that the United States should prevent the spread of Communism to non-Communist states by “containing” Communism within its borders.⁸¹ The concept was that isolation would lead to stagnation and the eventual fall of the Soviet Union. This strategy was initially adopted by President Truman as a key principle of his overall doctrine and subsequently incorporated as an objective in NSC 20/4 in 1948 and in NSC 68 in 1950. Subsequent

⁷⁹ This interpretation of the legal basis stems from Iraq’s violations of the cease fire agreement [SCR 687] described in the previous chapter.

⁸⁰ *Wikipedia*, <http://en.wikipedia.org/wiki/Containment>; “Containment,” Internet; accessed 13 April, 2006.

⁸¹ *Wikipedia*, <http://en.wikipedia.org/wiki/Containment>; “Containment,” Internet; accessed 13 April, 2006.

Presidents, up until Reagan, used “containment strategy” as the focal point of American foreign policy until the end of the Cold War.⁸²

Containment, as a strategy, quickly re-emerged at the end of the first Gulf War, in 1991, as a means of dealing with Iraq.⁸³ This strategy was similar to its Cold War predecessor in that it sought to “isolate” Iraq and cause the stagnation of Saddam’s regime.⁸⁴ Additionally, this strategy sought to disarm Iraq and prevent Saddam from future acts, or consideration, of aggression against his neighbors.⁸⁵ This strategy essentially had four elements: (1) The destruction of Saddam’s extant weapons of mass destruction and proscribed weapons capability; (2) The establishment of a long term monitoring mechanism to ensure continued compliance; (3) The continuation of sanctions imposed in earlier Security Council resolutions; and (4) The presence of United States’ [and other countries] forces in the region to deal with any threat from Iraq or to discipline the regime if required.⁸⁶ The following sections of this chapter will provide an assessment of the effectiveness of each element of the containment strategy as well as provide a prognosis for future success as it appeared in 2002/2003.

Element 1 – Destruction of Extant Capability

⁸² Wikipedia, <http://en.wikipedia.org/wiki/Containment>; “Containment,” Internet; accessed 13 April, 2006.

⁸³ Wikipedia, <http://en.wikipedia.org/wiki/Containment>; “Containment,” Internet; accessed 13 April, 2006.

⁸⁴ Kenneth M. Pollack, *The Threatening Storm: The Case for Invading Iraq* (New York: Random House, 2002), xxv.

⁸⁵ Kenneth M. Pollack, *The Threatening Storm: The Case for Invading Iraq* (New York: Random House, 2002), xxv.

⁸⁶ Kenneth M. Pollack, *The Threatening Storm: The Case for Invading Iraq* (New York: Random House, 2002), xxv.

The first element of the Containment strategy was to seek the destruction of Iraq's extant weapons of mass destruction capability, ballistic missile arsenal as well as future capability to produce such weapons.⁸⁷ This task was initially performed by IAEA and the UNSCOM. UNSCOM was later replaced by UNMOVIC.

Assessment. Although there appeared to be early acceptance of the requirements of SCR 687 by Iraq, it was only a matter of time before it became apparent that Iraq was not, and would not, cooperate fully with UNSCOM or the IAEA.⁸⁸ In fact, Iraq's obstruction of inspection teams led the President of the Security Council to state on 28 June 1991, just months after the conclusion of the war, that Iraq's actions had, "... constituted flagrant violations of Security Council Resolution 687".⁸⁹ In its first report in October 1991, UNSCOM reported on the "... failure of Iraq ... to adopt the candid and open approach to disclosure of its capabilities which is called for in Resolution 687 ... engendering an atmosphere of profound skepticism."⁹⁰ In subsequent years, the containment strategy did not fare much better. Saddam learned to shift his focus away from direct confrontation to an indirect approach of attacking the United Nations and the United States by splitting his adversaries and deceiving inspectors.⁹¹ He became adept at

⁸⁷ Kenneth M. Pollack, *The Threatening Storm: The Case for Invading Iraq* (New York: Random House, 2002), xxv.

⁸⁸ Graham S. Pearson, *The UNSCOM Saga: Chemical and Biological Weapons Non-Proliferation* (New York: St. Martin's Press, Inc., 1999), 9.

⁸⁹ Graham S. Pearson, *The UNSCOM Saga: Chemical and Biological Weapons Non-Proliferation* (New York: St. Martin's Press, Inc., 1999), 15.

⁹⁰ Graham S. Pearson, *The UNSCOM Saga: Chemical and Biological Weapons Non-Proliferation* (New York: St. Martin's Press, Inc., 1999), 17.

defying, while stating his intent to abide by, Security Council resolutions. In the words of former UNSCOM Executive Chairman, Richard Butler, this was Saddam's tactic of "cheat/retreat/cheat".⁹²

More serious concerns with containment were brought to light in 1994 with the defection of the Chief of Iraqi Intelligence Services, Wafiq al-Samarra'i. Al-Samarra'i's stated that Iraq,

had manufactured and loaded VX nerve agent onto missiles during the Gulf War; that it had a far more comprehensive and intact biological warfare program than the inspectors realized; and that it had secreted biological and chemical munitions, along with over 40 modified SCUD missiles since then.⁹³

This statement that the United Nations weapons inspectors had been led astray by Saddam's regime was corroborated by Saddam's son in law, Hussein Kamel, who defected a year later.⁹⁴ Kamel's defection also led UNSCOM to obtain documentation that proved, "beyond a doubt," that Iraq had: successfully deceived UNSCOM; retained further documents; and implemented a system for the retention of prohibited materials as well as the conduct of prohibited activities.⁹⁵

Despite these allegations, international resolve began to show signs of crumbling. The United Nations became preoccupied with other conflicts, such as in the Former

⁹¹ Thomas Donnelly, *Operation Iraqi Freedom: A Strategic Assessment* (Washington: The AEI Press, 2004), 10.

⁹² Richard Butler, *The Greatest Threat: Iraq, Weapons of Mass Destruction, and the Crisis of Global Security* (New York: Public Affairs, 2000), 213.

⁹³ Thomas Donnelly, *Operation Iraqi Freedom: A Strategic Assessment* (Washington: The AEI Press, 2004), 12.

⁹⁴ Thomas Donnelly, *Operation Iraqi Freedom: A Strategic Assessment* (Washington: The AEI Press, 2004), 12.

⁹⁵ Charles Duelfer, "Arms Reduction: The Role of International Organizations, the UNSCOM Experience," *Journal of Conflict & Security Law* 5, no. 1 (June 2000): 113.

Yugoslavia, and hence less interested in dealing with Iraq. This allowed Saddam to continue his tactics of interfering with the inspection process and issuing threats to remove inspectors from Iraq. The result was that weapons inspectors and United Nations officials would negotiate, and then eventually succumb to, terms for inspections proposed by Saddam Hussein. This had the result of diminishing the thoroughness and credibility of their reports which further delayed the disarmament process.⁹⁶ This reduced thoroughness and credibility of UNSCOM reports was not due to a lack of professionalism on the part of inspectors, but rather the circumstances and conditions under which they had to perform their task.

The cycle of Iraqi threats and United Nations concessions continued into the latter part of the 1990s, and began to highlight significant fissures in the international consensus supporting the containment strategy. This cycle included the 1998 involvement of both the Russians, and the United Nations Secretary General, Kofi Annan, in brokering deals with Iraq.⁹⁷ Both times Saddam succeeded in further weakening the credibility of inspections and the international resolve against him. Having determined that there no longer remained any international solidarity or resolve to force his compliance with Security Council resolutions, Saddam evicted all weapons inspectors from Iraq in October and completely ceased any cooperation with UNSCOM in December 1998.⁹⁸ This decision led to the termination of UNSCOM and the establishment, in 1999, of UNMOVIC with the adoption of SCR 1284.⁹⁹

⁹⁶ Thomas Donnelly, *Operation Iraqi Freedom: A Strategic Assessment* (Washington: The AEI Press, 2004), 13.

⁹⁷ Richard Butler, *The Greatest Threat: Iraq, Weapons of Mass Destruction, and the Crisis of Global Security* (New York: Public Affairs, 2000), 138-141.

Although UNMOVIC was created to replace UNSCOM, the organization's effectiveness was limited because, from 1998 until 2002, there were no weapons inspectors in Iraq and no way to monitor, or determine, the extent of any potential WMD program. During this period, there were constant reports of Iraq rebuilding its WMD arsenal from numerous sources both inside Iraq and throughout the international community.¹⁰⁰

Prognosis. In order for this element of the containment strategy to be successful, two conditions would be necessary. The first condition was that the Iraqi regime of Saddam Hussein would have to participate in an open and honest manner. They would have to provide the necessary information and access to facilities that would provide a measure of credibility and confidence that proscribed weapons programs and material had been destroyed. This should have taken place immediately after the First Gulf War but did not. The second condition required was international resolve. The decade prior to 2002 established that this resolve was not solid. In fact, what stood out during this period was the lack of collective resolve in the international forum.¹⁰¹ Appearances of international resolve returned with the unanimous support associated with the adoption of SCR 1441 in November 2002, but this was a hollow commitment.

⁹⁸ Christopher T. Anglim, *The Iraq War (2003): A Documentary Legal History (Volume 1)*, (Buffalo: William S. Hein & Co., 2004), 68.

⁹⁹ United Nations Security Council, "Resolution 1284," <http://daccessdds.un.org/doc/UNDOC/GEN/N99/396/09/PDF/N9939609.pdf?OpenElement>; Internet; accessed 14 April, 2006.

¹⁰⁰ Kenneth M. Pollack, "Spies, Lies, and Weapons: What Went Wrong," *The Atlantic Monthly* 293, iss. 1 (Jan/Feb 2004): 80.

¹⁰¹ Charles Duelfer, "Arms Reduction: The Role of International Organizations, the UNSCOM Experience," *Journal of Conflict & Security Law* 5, no. 1 (June 2000): 119,121, 122.

There would not have been such an endorsement had the United States not already demonstrated, through the deployment of significant military forces to the Persian Gulf, that it was prepared to use force to remove Saddam.¹⁰² Charles Duelfer provided a damning prognosis for disarmament under Saddam when he opined that,

Unfortunately, as demonstrated by the UN Special Commission (UNSCOM) and the International Atomic Energy Agency (IAEA) from 1991 to 1998, any weapons inspectors sent into Iraq under the ground rules of the existing Security Council resolutions and the existing Iraqi regime are doomed to fail.¹⁰³

The decade since the end of the First Gulf War demonstrated clearly that if the international community wanted a credible assurance that Iraq was disarmed of its WMD and proscribed weapons, it would not occur while Saddam's regime remained in power.

Element 2 – Long Term Monitoring

Assessment. The second element of the strategy was the establishment of a long term monitoring ability to ensure Iraq's continued compliance with the terms of SCR 687. This monitoring element was originally intended to come into effect immediately upon, what the United Nations originally assumed would be, the quick disarmament of Saddam's Iraq. Since the disarmament of Iraq was never confirmed however, this element never came into effect. Conversely, one could argue that UNSCOM and UNMOVIC were, in fact, long term monitoring agencies. Given this assumption their ability to effectively perform their duties was limited given the reasons described earlier.

¹⁰² Frank P. Harvey, *Smoke and Mirrors: Globalized Terrorism and the Illusion of Multilateral Security* (Toronto: University of Toronto Press, 2004), 76.

¹⁰³ Charles Duelfer, "The Inevitable Failure of Inspections in Iraq," *Arms Control Today* 32, no. 7 (Sep, 2002): 8. Charles Duelfer served as the deputy executive chairman of UNSCOM from 1993-2000.

The IAEA had been conducting monitoring inspections in Iraq both before the Gulf War and for a period afterwards. Despite the monitoring of this agency, under Hans Blix¹⁰⁴, Iraq was able to advance a nuclear weapons program that was not detected.¹⁰⁵ In fact, this program was only detected, and confirmed, after the Gulf War through the perseverance of David Kay, a weapons inspector.¹⁰⁶ At the time of its discovery, Iraq was still in the process of attempting to hide this program from the international community.¹⁰⁷

Prognosis. Although the long term monitoring element of the containment strategy never officially had an opportunity to come into effect, it did not have great potential to succeed. This assertion is based not only on the IAEA's belated detection of Iraq's nuclear program, but also on Iraq being able to procure proscribed material for missile development and actually being able to conduct surface to surface missile tests without UNSCOM's awareness.¹⁰⁸ Khidhir Hamza, a nuclear physicist who headed Iraq's nuclear weapons program before his defection to the West, reinforces this assertion in a 2002 article where he stated that:

What is not recognized by the world community, though, is the determination with which the regime of Saddam Hussein intends to pursue programs to produce weapons of mass destruction, including nuclear weapons . . . The nuclear weapons group is still in place; the

¹⁰⁴ Hans Blix was the Director of the International Atomic Energy Agency from 1981 – 1997.

¹⁰⁵ Lawrence F. Kaplan and William Kristol, *The War Over Iraq: Saddam's Tyranny and America's Mission* (San Francisco: Encounter Books, 2003), 29.

¹⁰⁶ Hans Blix, *Disarming Iraq* (New York: Pantheon Books, 2004), 24-25.

¹⁰⁷ Hans Blix, *Disarming Iraq* (New York: Pantheon Books, 2004), 23-25.

¹⁰⁸ Charles Duelfer, "The Inevitable Failure of Inspections in Iraq," *Arms Control Today* 32 no. 7 (Sep 2002): 11.

expertise is still there; and Saddam Hussein and his colleagues are well practiced in the arts of deception.¹⁰⁹

Element 3 – Sanctions

Assessment. The third element of this containment strategy was the continued enforcement of sanctions against Iraq imposed as part of SCR 661 in August 1991.¹¹⁰ Just as sanctions failed to influence Saddam's compliance prior to the Gulf War, sanctions also failed to achieve their intent of motivating Saddam to comply with the first containment strategy element of disarmament. Instead of being a short term tool, as intended, this element became a long term fixture with the added goal of preventing Saddam from building up his military capability.¹¹¹

Because Saddam refused to cooperate fully with weapons inspectors and the international community, most countries did not accept Iraqi claims of disarmament. As a result, the sanctions against Iraq remained in place. For the Iraqi population these sanctions proved very painful. They had the effect of devastating the Iraqi economy and significantly reducing the quality of life for most citizens.¹¹² There were shortages of food and medicine and an abundance of illness, disease and death. For a brutal dictator such as Saddam Hussein, who ruled his country unopposed, this was not a significant

¹⁰⁹ Khidhir Hamza, "Saddam's Nuclear Program," in *The Saddam Hussein Reader: Selections From Leading Writers On Iraq*, ed. Turi Munthe, 417-430 (New York: Thunder's Mouth Press, 2002), 430.

¹¹⁰ United Nations Security Council, "Resolution 661," <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/575/10/IMG/NR057510.pdf?OpenElement>; Internet; accessed 13 April, 2006.

¹¹¹ Kenneth M. Pollack, *The Threatening Storm: The Case for Invading Iraq* (New York: Random House, 2002), xxv.

¹¹² Sarah Graham-Brown and Chris Toensing, "A Backgrounder on Inspections and Sanctions," in *The Iraq Reader: History, Documents, Opinions*, edited by Micah L. Sifry and Christopher Cerf, 165-173 (New York: Touchstone, 2003), 169.

problem. In fact, Saddam used the sanctions to his benefit by controlling the money and whatever imports and exports Iraq produced to buy loyalty.¹¹³

The United Nations was in a difficult position. Sanctions were causing pain and suffering in Iraq, while the alternative of removing the sanctions would reward Saddam for not adhering to Security Council resolutions. Removing the sanctions would also increase the possibility that Iraq could import material to re-arm and reestablish its military capabilities.

Saddam Hussein used the suffering of the Iraqi population as a pawn in his efforts to divide the international resolve against him. He repeatedly blamed the United Nations sanctions for the predicament of his population and threatened to prevent/deny any further inspections until economic sanctions were lifted.¹¹⁴ Under these threats by Saddam, and the growing concern about the Iraqi population, the United Nations decided to adopt the 'Oil-for-Food' Programme in 1995, by approving SCR 986.¹¹⁵ This was not the first time this type of program had been put forth by the Security Council to address the humanitarian situation in Iraq. SCR 706¹¹⁶ was adopted in August 1991, to trade oil for humanitarian supplies but, as would be the case with SCR 986 in 1995, Saddam refused the terms of the program and would not participate. It was only in late 1996,

¹¹³ Kenneth M. Pollack, *The Threatening Storm: The Case for Invading Iraq* (New York: Random House, 2002), 134-136.

¹¹⁴ Thomas Donnelly, *Operation Iraqi Freedom: A Strategic Assessment* (Washington: The AEI Press, 2004), 12.

¹¹⁵ United Nations Security Council, "Resolution 986," <http://daccessdds.un.org/doc/UNDOC/GEN/N95/109/88/PDF/N9510988.pdf?OpenElement>; Internet; accessed 14 April, 2006.

¹¹⁶ United Nations Security Council, "Resolution 706," <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/596/42/IMG/NR059642.pdf?OpenElement>; Internet; accessed 14 April, 2006.

after significant concessions were made to Iraq that a Memorandum of Understanding was finally signed and Iraqi oil began to flow.¹¹⁷

Iraq, through United Nations concessions, had gained the authority to select to whom Iraqi oil would be sold, as well as from whom Iraq would purchase humanitarian supplies.¹¹⁸ Although these concessions were intended to respect the authority of Iraq as a sovereign nation, they had the actual effect of providing Saddam a golden opportunity to conduct illicit trade both within and outside of the program.¹¹⁹ A subsequent investigation of the program identified that Saddam had illegally obtained \$1.8 billion through illegal surcharges, skimming and kickbacks.¹²⁰

More significantly, the ‘Oil-for-Food’ Programme allowed Saddam to further weaken the coalition and international consensus against him.¹²¹ He used these lucrative contracts to gain the support of countries such as Russia, China and France, which would prove significant in the coming years.¹²² These countries were among those who also engaged in illegal trade with Saddam in violation of the United Nations’ Charter.¹²³ This

¹¹⁷ United Nations Office of the Iraq Programme Oil-for-Food, “Implementation of Oil-for-Food: A Chronology,” <http://www.un.org/Depts/oip/background/chron.html>; Internet; accessed 13 April, 2006.

¹¹⁸ United Nations News Center, “The United Nations Oil-for-Food Programme,” <http://www.un.org/News/dh/iraq/oip/facts-oilforfood.htm>; Internet; accessed 13 April, 2006.

¹¹⁹ United Nations News Center, “The United Nations Oil-for-Food Programme,” <http://www.un.org/News/dh/iraq/oip/facts-oilforfood.htm>; Internet; accessed 13 April, 2006.

¹²⁰ Independent inquiry Committee Into The United Nations Oil For Food Programme, “Summary of Report on Programme Manipulation,” <http://www.iic-offp.org/documents/Final%20Report%2027Oct05/IIC%20Final%20Report%20-%20Chapter%20One.pdf>; Internet; accessed 15 April, 2006.

¹²¹ Thomas Donnelly, *Operation Iraqi Freedom: A Strategic Assessment* (Washington: The AEI Press, 2004), 13.

¹²² Michael V. Deaver, *Disarming Iraq: Monitoring Power and Resistance* (London: Praeger, 2001), 136.

trade involved not only additional oil, but proscribed items such as Russian missile gyroscopes and a Chinese, nation wide fiber-optic communications system, for Baghdad's military and internal security infrastructure.¹²⁴ A clear indication that Saddam was achieving success in breaking the coalition against him was evidenced as early as 1997, when China, Russia and France's abstained on SCR 1134.¹²⁵

With the flagging support, and frequent violations of current United Nations sanctions against Iraq, the Bush Administration proposed an alternative "Smart Sanction" plan in 2001.¹²⁶ This plan would focus efforts on preventing Iraq's attempts to rebuild its military while easing the suffering of the Iraqi population, who had been feeling the pain of sanctions for almost a decade.¹²⁷ France, Russia and China were not interested whatsoever in "Smart Sanctions", thus preventing its adoption by the United Nations and leaving the United States and its allies responsible for continuing the containment of Iraq.¹²⁸

¹²³ Canada, Department of National Defence, B-GG-005-027/AF-022 *Collection of Documents on the Law of Armed Conflict* (Ottawa: DND Canada, 2005), 63. Paragraph 5, Article 2, Chapter 1

¹²⁴ Kenneth M. Pollack, *The Threatening Storm: The Case for Invading Iraq* (New York: Random House, 2002), xxviii.

¹²⁵ United Nations Security Council, "Resolution 1134," <http://daccessdds.un.org/doc/UNDOC/GEN/N97/283/87/PDF/N9728387.pdf?OpenElement>; Internet; accessed 14 April, 2006. These sanctions were in response to Iraq's continued interference with weapons inspectors and for launching a rocket propelled grenade into UNSCOM headquarters.

¹²⁶ Kenneth M. Pollack, *The Threatening Storm: The Case for Invading Iraq* (New York: Random House, 2002), 218.

¹²⁷ Kenneth M. Pollack, *The Threatening Storm: The Case for Invading Iraq* (New York: Random House, 2002), 218.

¹²⁸ Thomas Donnelly, *Operation Iraqi Freedom: A Strategic Assessment* (Washington: The AEI Press, 2004), 16-17.

Prognosis. United Nations sanctions, although imposed as a means to encourage Saddam's compliance with Security Council resolutions, ended up being used by Saddam as a tool to disrupt inspections and gain favour with willing nations. Any continuation of sanctions after 2002/2003 would likely have had minimal positive effect and would have extended the suffering of the Iraqi population. Continuing the 'Oil-for-Food' Programme would have resulted in further embezzlement by Saddam, his friends and his allies. The international community had already demonstrated that they were prepared to conduct trade with Iraq outside of the sanctions, and in violation of their Charter responsibilities, so the credibility of any future sanctions was lost.

Element 4 – Enforcement

Assessment. The final element of the containment strategy was the requirement to have United States and other coalition forces stationed in the Persian Gulf to ensure Iraqi compliance, and to punish Iraq if required.¹²⁹ Immediately, this element took on the additional responsibility of protecting sections of the Iraqi population with the enforcement of "No Fly Zones" established by the United States after the ratification of SCR 688.¹³⁰ These zones were created to protect the largely Kurdish and Shi'ah population from Saddam's repression after the massacre of thousands of civilians and the fleeing of millions in the Spring of 1991.¹³¹

¹²⁹ Kenneth M. Pollack, *The Threatening Storm: The Case for Invading Iraq* (New York: Random House, 2002), xxv.

¹³⁰ United Nations Security Council, "Resolution 688," <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/596/24/IMG/NR059624.pdf?OpenElement>; Internet; accessed 13 April, 2006.

It did not take long before the requirement for enforcement became apparent. Problems with the containment strategy began to appear as early as 1992, with Iraqi forces testing the limits of the “No Fly Zones.”¹³² In 1993, Iraq continued impeding weapons inspectors and illegally repossessed equipment abandoned in Kuwait.¹³³ These actions were clearly not authorized and resulted in the United Nations declaring Iraq to be yet again in “material breach” of SCR 687.¹³⁴ In response, the United States, the United Kingdom and France launched air and cruise missile strikes against Iraq.¹³⁵ While this limited reaction was intended to demonstrate strength and resolve, it likely had the opposite effect of demonstrating caution because of the very limited effect on Saddam and his regime.¹³⁶

Throughout the decade after the Gulf War, Saddam continued to test the resolve of the international community poised against him. He used his military force to suppress the population, threaten his neighbours and test the limits of the “No Fly Zone.” On numerous occasions, the United States and allies responded with limited attacks against military buildings and facilities, achieving some physical damage to structures, but having little to no significant effect on Saddam Hussein or the future of his regime.

¹³¹ Kenneth M. Pollack, *The Threatening Storm: The Case for Invading Iraq* (New York: Random House, 2002), 50-51.

¹³² Thomas Donnelly, *Operation Iraqi Freedom: A Strategic Assessment* (Washington: The AEI Press, 2004), 9.

¹³³ Thomas Donnelly, *Operation Iraqi Freedom: A Strategic Assessment* (Washington: The AEI Press, 2004), 9.

¹³⁴ Thomas Donnelly, *Operation Iraqi Freedom: A Strategic Assessment* (Washington: The AEI Press, 2004), 9.

¹³⁵ Thomas Donnelly, *Operation Iraqi Freedom: A Strategic Assessment* (Washington: The AEI Press, 2004), 9.

¹³⁶ Charles Duelfer, “The Inevitable Failure of Inspections in Iraq,” *Arms Control Today* 32, no. 7 (Sep, 2002): 9.

Interest in enforcing Iraq's compliance with United Nations resolutions was waning and any use of force by the United States and its allies was always followed by some condemnation by other members of the United Nations, as well as anti-war and humanitarian organizations.¹³⁷

When Saddam evicted weapons inspectors in 1998, once again the United States and Britain responded with a four day bombing campaign, called Operation Desert Fox, in an attempt to prompt Saddam into complying fully with United Nations resolutions.¹³⁸ The United States and Britain were chastised for their use of force, with much of the international community alleging President Clinton's ongoing impeachment process was the "real" motivation for the strike.¹³⁹ This led a number of countries, including allies such as France, Italy and the Netherlands to protest the attacks. Although Desert Fox was a more significant use of force than previous reprisals for Iraqi non-compliance, it was still not a significant punishment. Saddam's gamble had paid off and it was now clear to him, based on the limited military response, and the resultant international condemnation of America, that the world community was no longer serious about enforcing SCR 687 or other resolutions.¹⁴⁰

Saddam continued to pose a threat from 1998 to 2002 which necessitated the requirement for United States and other coalition forces to remain in the Persian Gulf

¹³⁷ Kenneth M. Pollack, *The Threatening Storm: The Case for Invading Iraq* (New York: Random House, 2002), xxvii.

¹³⁸ Thomas Donnelly, *Operation Iraqi Freedom: A Strategic Assessment* (Washington: The AEI Press, 2004), 14.

¹³⁹ Richard Butler, *The Greatest Threat: Iraq, Weapons of Mass Destruction, and the Crisis of Global Security* (New York: Public Affairs, 2000), 212.

¹⁴⁰ Thomas Donnelly, *Operation Iraqi Freedom: A Strategic Assessment* (Washington: The AEI Press, 2004), 14.

region. Although the element of enforcement by use of military force had not achieved the desired effect of ensuring Saddam's compliance with Security Council resolutions, it did achieve a measure of success in limiting how far outside of the resolutions he could venture, and in protecting elements of the Iraqi population from genocide.

Prognosis. As long as Saddam Hussein and his regime remained in power there would be the requirement to maintain a credible military force within the Persian Gulf. Saddam would continue to push the limits and the United States would continue to respond with limited military action. While limited military action to enforce Iraqi compliance may have received substantial support from the United Nations in 2002/2003, it would only be because the United States was on the precipice of war. Once the United States moved back from this precipice, the international community would again lose its interest in limited military reprisals and its actions would revert to ones that existed prior to 2002.¹⁴¹

Costs of Containment

The containment strategy for Iraq was originally intended to be a low cost method of ensuring Saddam was prevented from rebuilding his military strength, especially WMD.¹⁴² Instead, this strategy had significant and varying costs for most parties involved. These costs included: (1) The suffering of the Iraqi population; (2) The cost of inspections; (3) The recurrent cycles of military conflict; (4) The loss of Security Council

¹⁴¹ Kenneth M. Pollack, *The Threatening Storm: The Case for Invading Iraq* (New York: Random House, 2002), 226.

¹⁴² Kenneth M. Pollack, *The Threatening Storm: The Case for Invading Iraq* (New York: Random House, 2002), 243.

authority and credibility; (5) The heightening of tensions between world powers; (6) The erosion of respect for the United Nations; and (7) The fuelling of Islamic radicalism and terrorism.¹⁴³ A look at these costs will demonstrate that a significant price was paid pursuing this strategy for over a decade.

Effect On Iraqi Population . The containment strategy caused the suffering of the Iraqi population in two ways. First, it imposed sanctions that had terrible impact on the well-being of the population, and secondly, it left a brutal dictator and regime in charge of Iraq. Sarah Graham-Brown highlights that the sanctions on Iraq “. . . raised substantial concerns about the impact of coercive measures against governments when the populations in question have no democratic rights.”¹⁴⁴ The impact of sanctions on the Iraqi population was substantial, including a 160% increase in infant mortality rates over the decade from 1990 to 2000.¹⁴⁵ Saddam’s refusal to adhere to Security Council resolutions clearly signaled that the regime placed security and military requirements, including the ability to buy loyalty and support inside and outside of Iraq, over the basic needs of the population.¹⁴⁶

¹⁴³ Richard Butler, *The Greatest Threat: Iraq, Weapons of Mass Destruction, and the Crisis of Global Security* (New York: Public Affairs, 2000), 229. Richard Butler does not include the cost of ‘fuelling Islamic radicalism and terrorism’. It was added separately by the author.

¹⁴⁴ Sarah Graham-Brown and Chris Toensing, “A Backgrounder on Inspections and Sanctions,” in *The Iraq Reader: History, Documents, Opinions*, ed. Micah L. Sifry and Christopher Cerf, 165-173 (New York: Touchstone, 2003), 168. Sarah Graham-Brown is the author of *Sanctioning Saddam: The Politics of Intervention in Iraq*.

¹⁴⁵ Sarah Graham-Brown and Chris Toensing, “A Backgrounder on Inspections and Sanctions,” in *The Iraq Reader: History, Documents, Opinions*, ed. Micah L. Sifry and Christopher Cerf, 165-173 (New York: Touchstone, 2003), 168.

Saddam's regime was ruthless even prior to the First Gulf War. An example of its atrocities was the poison gas attacks against Iraqi Kurds in 1988 that killed thousands.¹⁴⁷ Other examples after the Gulf War include the brutal treatment of Iraqis described by Brigadier General Abu Zeinab al-Qurairy, the most senior officer to ever defect from Iraq's Mukhabarat Intelligence Service.¹⁴⁸ Al-Qurairy spoke of his own involvement in mass murder, torture, abductions and rapes. He also stated that in 1991, over 300,000 Iraqis were killed by the Republican Guard and other Iraqi forces in a period of a few weeks. He added that helicopter gunships gunned down whole villages with those not killed immediately buried alive in mass graves by bulldozers.¹⁴⁹

There are many other human rights violations associated with this regime that are currently under investigation. These investigations have thus far resulted in Saddam Hussein, and seven other members of his regime, being required, to stand trial in Iraq for their roles in the crackdown on Shiites in the town of Dujail after a 1982 assassination attempt on Saddam.¹⁵⁰ This crackdown involved the killing of 148 Shiites as well as the imprisonment and torture of hundreds. Saddam, and six other members of his regime,

¹⁴⁶ Sarah Graham-Brown and Chris Toensing, "A Backgrounder on Inspections and Sanctions," in *The Iraq Reader: History, Documents, Opinions*, ed. Micah L. Sifry and Christopher Cerf, 165-173 (New York: Touchstone, 2003), 169.

¹⁴⁷ Johanna McGeary, "Inside Saddam's World," in *The Saddam Hussein Reader: Selections From Leading Writers On Iraq*, ed. Turi Munthe, 477-485 (New York: Thunder's Mouth Press, 2002), 477.

¹⁴⁸ David Rose, "Inside Saddam's Terror Regime," in *The Saddam Hussein Reader: Selections From Leading Writers On Iraq*, ed. Turi Munthe, 464-476 (New York: Thunder's Mouth Press, 2002), 464.

¹⁴⁹ David Rose, "Inside Saddam's Terror Regime," in *The Saddam Hussein Reader: Selections From Leading Writers On Iraq*, ed. Turi Munthe, 464-476 (New York: Thunder's Mouth Press, 2002), 465,470.

¹⁵⁰ CNN, "Hussein Grins, Reads Poetry During Cross-examination," <http://www.cnn.com/2006/WORLD/meast/04/05/hussein.trial.ap/index.html>; Internet; accessed 14 April, 2006.

have also been charged separately with genocide and crimes against humanity for their role in Operation Anfal, a move against Kurds in northern Iraq in the late 1980s.¹⁵¹

These investigations are still ongoing and it is anticipated that further charges will be laid against Saddam and members of his regime. The examples provided of Saddam's atrocities, in conjunction with the ongoing investigations and trials, clearly lend credence to Max Van de Stoel's statement that the brutality in Iraq under Saddam was ". . . of an exceptionally grave character – so grave that it has few parallels in the years that have passed since the Second World War."¹⁵²

Costs Of Inspections. The United Nations paid millions of dollars to conduct weapons inspections in Iraq over the period of containment.¹⁵³ In addition to the monetary costs, there were also the sacrifices of the inspectors and their families who committed themselves to this cause only to be stymied again and again.¹⁵⁴ There were also significant other costs associated with the enforcement of this strategy including the cost of maintaining coalition forces in the Persian Gulf. This enforcement element was largely financed by the United States, and to some extent Britain, with minimal contribution from other nations. It was also American and British soldiers, sailors and

¹⁵¹ CNN, "Hussein Charged With Genocide," <http://www.cnn.com/2006/WORLD/meast/04/04/hussein.trial.ap/index.html>; Internet; accessed 14 April, 2006.

¹⁵² Kanan Makiya, "How Saddam Held On to Power," in *The Iraq Reader: History, Documents, Opinions*, ed. Micah L. Sifry and Christopher Cerf, 114-126 (New York: Touchstone, 2003), 117. Max Van de Stoel was a former UN special rapporteur for human rights in Iraq.

¹⁵³ Some profits from the "Oil-for-Food" Programme were used to offset costs.

¹⁵⁴ Richard Butler, *The Greatest Threat: Iraq, Weapons of Mass Destruction, and the Crisis of Global Security* (New York: Public Affairs, 2000), 229.

airmen who risked their lives in enforcing containment and conducting retaliatory strikes when required.

When compared to the other costs associated with the containment strategy, the monetary costs are not a significant issue for the United Nations, especially when a portion of these costs were offset by the “Oil-for-Food” Programme. The most significant cost, however, was borne by the Iraqi economy and quality of life, which were severely corrupted and destroyed in the course of pursuing this strategy.¹⁵⁵

Recurrent Cycles Of Military Conflict. The containment of Iraq was by no means a non-violent and peaceful strategy. As a means of enforcement, it required repeated threat and use of armed force throughout the period. Some significant military actions included the 1993 United States attack on Saddam’s regime in retaliation for Iraq’s attempted assassination of former President Bush in Kuwait.¹⁵⁶ In 1996, the United States launched 44 cruise missiles against Iraq in response to their movement of 30,000 troops into Kurdish territory in violation of SCR 688.¹⁵⁷ In December 1998, the United States and Britain launched the most significant use of military force in Iraq since the end of the Gulf War in response to Iraq’s non-compliance with Security Council

¹⁵⁵ Sarah Graham-Brown and Chris Toensing, “A Backgrounder on Inspections and Sanctions,” in *The Iraq Reader: History, Documents, Opinions*, ed. Micah L. Sifry and Christopher Cerf, 165-173 (New York: Touchstone, 2003), 169-171.

¹⁵⁶ Thomas M. Nichols, “Just War, Not Prevention,” *Ethics & International Affairs* 17 no. 1 (2003): 28.

¹⁵⁷ Christopher T. Anglim, *The Iraq War (2003): A Documentary Legal History (Volume 1)*, (Buffalo: William S. Hein & Co., 2004), 64-65. This strike caused the French to pull out of enforcement duties in the Persian Gulf.

resolutions and refusal to work with UNSCOM.¹⁵⁸ Enforcement of the “No Fly Zones” also entailed constant armed conflict. As an example, in the period between 1998 and 2003 Iraq fired on coalition aircraft enforcing the zone over 700 times.¹⁵⁹ These conflicts had the effect of exposing both the Iraqi population and coalition military to frequent danger, and exposes the fact that a containment strategy is not necessarily a pacifist strategy.

Loss of Security Council Authority & Credibility. Another significant cost of this strategy was the loss of Security Council authority and credibility. This loss was largely due to the council’s lack of commitment and inability to enforce its own resolutions. In the decade after the Gulf War, Saddam violated over 16 resolutions, yet the Security Council was paralyzed, and reluctant to take any substantive and unified action other than acknowledging the “material breaches.”¹⁶⁰

The lesson from this paralysis was that the members of the council, especially the Permanent Five, were all primarily concerned with national issues over their international responsibility of promoting global peace and security. This was especially true for Russia, France and China who conducted significant legal and illegal trade with Iraq.¹⁶¹

¹⁵⁸ Christopher T. Anglim, *The Iraq War (2003): A Documentary Legal History (Volume 1)*, (Buffalo: William S. Hein & Co., 2004), 68.

¹⁵⁹ Thomas M. Nichols, “Just War, Not Prevention,” *Ethics & International Affairs*, 17 no. 1 (2003): 28.

¹⁶⁰ In fairness, the Iraq situation was not the only activity that was diminishing the credibility of the Security Council during this period. The Security Council had also demonstrated its inability to deal with conflicts in the Former Yugoslavia and Rwanda.

¹⁶¹ Richard Butler, *The Greatest Threat: Iraq, Weapons of Mass Destruction, and the Crisis of Global Security* (New York: Public Affairs, 2000), xvi.

These acts of conducting illegal trade with Iraq were in contravention of the United Nations Charter.¹⁶² The Security Council's failure to effectively address Iraq's constant violation of its resolutions, coupled with the selfish and illicit acts of some of its permanent members, clearly demonstrated that it was in essence a "toothless tiger" who could easily be bribed and coerced by tyrants.

Heightening Tensions Between World Powers. The containment strategy precipitated a heightening of tensions between world powers at various times during the post-Gulf War period. Increased tensions were largely due to the lack of a unified approach on the disarmament of Iraq and the fact that all countries were pursuing national agendas ahead of promoting global peace and stability. Countries, such as France and Russia, were negating their responsibilities in the Security Council by allowing Saddam to purchase their loyalty and support through lucrative legal contracts and illicit trade. For example, Russia had an agreement with Baghdad for the development of the large Qurnah oil fields, subject to the lifting of sanctions on Iraq.¹⁶³ France's major oil companies, Elf Aquitaine and Total, had also signed enormous oil contracts with Iraq contingent upon France's support to Iraq on United Nations resolutions.¹⁶⁴ As a result, it

¹⁶² Canada, Department of National Defence, B-GG-005-027/AF-022 *Collection of Documents on the Law of Armed Conflict* (Ottawa: DND Canada, 2005), 63. Paragraph 5, Article 2, Chapter 1 of the United Nations Charter states that "all Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action"

¹⁶³ Charles Duelfer, "The Inevitable Failure of Inspections in Iraq," *Arms Control Today* 32, no. 7 (Sep, 2002): 10.

¹⁶⁴ Richard Butler, *The Greatest Threat: Iraq, Weapons of Mass Destruction, and the Crisis of Global Security* (New York: Public Affairs, 2000), 226-227.

might be stated that both Russia and France required Saddam to remain in power if these contracts were to be honoured.

Countries such as the United States and Britain, on the other hand, were enforcing resolutions, sanctions and efforts at disarmament while not receiving any additional benefit. There could be no other result than an increase in tensions between these powers. Adding fuel to the fire was that in addition to economic gains, the French and Russians were also using the situation in Iraq as a ploy to diminish the United States' global position as a "hyper-power".¹⁶⁵ Kenneth Pollack has described the behavior of these supposed allies as ". . . perfidious, feckless and outright duplicitous."¹⁶⁶ In sum, the United States actions in Iraq, regardless of their purpose or conduct, would be used by other nations to further their own "naked self-interests" and unilateral policies, regardless of any potentially positive outcome.¹⁶⁷

Erosion of Respect for The United Nations. The containment strategy in Iraq had the effect of contributing to the erosion of respect for the United Nations. In addition to the loss of respect associated with the impact of sanctions on Iraq and the diminished credibility and authority of its Security Council, there were also significant issues involving corruption in the "Oil-for-Food" Programme.¹⁶⁸ In April 2004, Paul A.

¹⁶⁵ Lawrence F. Kaplan and William Kristol, *The War Over Iraq: Saddam's Tyranny and America's Mission* (San Francisco: Encounter Books, 2003), 91-92.

¹⁶⁶ Kenneth M. Pollack, *The Threatening Storm: The Case for Invading Iraq* (New York: Random House, 2002), 24.

¹⁶⁷ Lawrence F. Kaplan and William Kristol, *The War Over Iraq: Saddam's Tyranny and America's Mission* (San Francisco: Encounter Books, 2003), 91.

Volcker¹⁶⁹ was named as the head of the Independent Inquiry Committee (IIC) to investigate this corruption.¹⁷⁰ In its final report in October 2005, the IIC highlighted the fact that Iraq had manipulated the “Programme” through various means including illicit payments, surcharges and kickbacks. It identified a total illicit income of \$1.8 billion and also highlighted concerns with respect to conflict of interest and ethical standards for senior United Nations officials. Finally, this report identified that Iraq had attempted to bribe the former Secretary General, Boutros-Boutros-Ghali, and while there was no evidence of any corrupt activity on his part, there was evidence of involvement of a family member and close associates.¹⁷¹

Even the current Secretary General of the United Nations, Kofi Annan, contributed to the United Nation’s loss of respect when, after meeting Saddam in 1998, he stated that, this is a man “I can do business with”.¹⁷² Although gloating that he had succeeded in reaching an agreement with Saddam where others had failed, his euphoria was cut short when, almost immediately thereafter, Iraq sought to amend the agreement.

¹⁶⁸ Independent inquiry Committee Into The United Nations Oil For Food Programme, “Summary of Report Programme Manipulation,” <http://www.iic-offp.org/documents/Final%20Report%2027Oct05/IIC%20Final%20Report%20-%20Chapter%20One.pdf>; Internet; accessed 15 April, 2006.

¹⁶⁹ Paul A. Volcker was a former Chairman of the Board of Governors of the United States Federal Reserve System.

¹⁷⁰ United Nations News Center, “The United Nations Oil-for-Food Programme,” <http://www.un.org/News/dh/iraq/oip/facts-oilforfood.htm>; Internet; accessed 13 April, 2006.

¹⁷¹ Independent inquiry Committee Into The United Nations Oil For Food Programme, “Summary of Report Programme Manipulation,” <http://www.iic-offp.org/documents/Final%20Report%2027Oct05/IIC%20Final%20Report%20-%20Chapter%20One.pdf>; Internet; accessed 15 April, 2006.

¹⁷² Richard Butler, *The Greatest Threat: Iraq, Weapons of Mass Destruction, and the Crisis of Global Security* (New York: Public Affairs, 2000), 141.

This agreement on the resumption of inspections was short lived, and less than a year later weapons inspectors were permanently evicted from Iraq.¹⁷³

The United Nations was unable to stop the gross human rights abuses within Iraq and its Security Council was paralyzed from taking substantive action to resolve issues and enforce compliance with its resolutions. Saddam was allowed to manipulate the organization through the naïveté of its most senior leaders and the narrow self interests of its member states. United Nations sanctions were taking a significant toll on the Iraqi population while the “Oil-for-Food” Programme lined the pockets of Saddam, his regime and whomever else whose loyalty he could buy. Allegations of corruption in the “Oil-for-Food” Programme involved the most senior leaders of the United Nations and brought into question the ethical conduct of a number of key individuals. In sum, respect for the United Nations eroded in the decade following the first Gulf War, because of the appearance that its component parts were unable to resolve the Iraq issue, and in some cases they exacerbated the situation.

Fuelling Islamic Radicalism & Terrorism. The containment strategy also included the cost of fuelling Islamic radicalism and terrorism. This fuelling of radicalism was the result of United Nations imposed sanctions against Iraq and the requirement to base American and British forces in the Persian Gulf. Both of these elements of the containment strategy contributed to anti-western sentiments and led al Qaeda leadership to issue a fatwa calling for a jihad against western occupation of ‘Islamic lands’.¹⁷⁴ The

¹⁷³ Richard Butler, *The Greatest Threat: Iraq, Weapons of Mass Destruction, and the Crisis of Global Security* (New York: Public Affairs, 2000), 140.

basing of western troops in Saudi Arabia was also a potential destabilizing issue for the Saudi leadership, who required coalition forces to remain in the country as a deterrent against the continuing threat posed by Saddam's Iraq.¹⁷⁵ The clearest manifestation of this cost was the horrific al Qaeda led attacks of 9/11.

Summary and Overall Prognosis

The United Nation's containment strategy for Iraq in the years after the end of the First Gulf War was neither a complete success nor a complete failure. Although it is easy to look back now and say with confidence, like Hans Blix, that Iraq was disarmed he was not prepared to do so in 2002.¹⁷⁶ No one was ready to make that assertion. In 2002/2003, most of the world, based largely on UNMOVIC, IAEA and UNSCOM reports, believed that the containment strategy had failed and that Iraq possessed a WMD capability. So, despite over a decade of costly sanctions, humanitarian crisis, recurrent limited military conflict, increased tensions between world powers, increased Islamic radicalism, and significant erosion of respect for the United Nations and Security Council resolutions, Iraq remained a threat. Any continuation of this strategy in its current or amended form would only result in the same dilemmas associated with the initial

¹⁷⁴ United States National Commission on Terrorist Attacks, *The 9/11 Commission Report: Final Report of the Commission on Terrorist Attacks Upon the United States Authorized Edition* (New York: W.W. Norton & Company, n.d.), 59.

¹⁷⁵ Martin Indyk, "Back to the Bazaar," *Foreign Affairs* 81, no.1 (January/February 2002): 81.

¹⁷⁶ Brecher, Irving. "In Defence of Preventive War: A Canadian Perspective." <http://proquest.umi.com/pqdweb?index=65&did=545429131&SrchMode=1&sid=26&Fmt=3&VInst=PROQD&VType=PQD&RQT=309&VName=PQD&TS=1137976831&clientId=1711>; Internet: accessed 14 April, 2006. "In the months before the war ended his job as chief UN weapons inspector, he [Hans Blix] had been expressing doubts as to Saddam Hussein's truthfulness regarding his destruction of Iraq's WMD's. By September [2003], in a masterpiece of false logic, he was declaring that because no WMD's had yet been found, it followed that Saddam probably destroyed his WMD's 10 years ago, after the Gulf War; and that Washington and London were comparable to medieval witch-hunters in terms of "over-interpreted" intelligence about Baghdad's weapons programs."

strategy. Charles Duelfer summarized the future prospect of the containment strategy when he wrote, “. . . sustained commitment to credible monitoring and disarmament is difficult, if not impossible . . . in a political, multilateral environment with shifting objectives and priorities.”¹⁷⁷

Deterrence

Although deterrence has likely existed forever, “Deterrence Theory” was developed as a defensive strategy after the Second World War and used throughout the Cold War.¹⁷⁸ This theory required a country, or group of countries, to build up and maintain military power so that other countries would not attack it for fear of retaliation. During the Cold War, nuclear deterrence was used by both the Soviet Union and the United States as a defensive strategy. The strategy was successful in the Cold War because the situation was such that either country was left with no doubt that they would suffer damage outweighing any potential gains from aggression. This, according to John Foster Dulles, a former United States Secretary of State, is the “heart” of deterrence theory.¹⁷⁹

Deterrence did not die with the end of the Cold War but, as a theory, it was no longer as simple. Each threat requires deterrence of a different nature. Robert Dorff and Joseph Cerami describe deterrence as “Actions undertaken to prevent another actor from

¹⁷⁷ Richard Butler, *The Greatest Threat: Iraq, Weapons of Mass Destruction, and the Crisis of Global Security* (New York: Public Affairs, 2000), 228.

¹⁷⁸ Robert H. Dorff and Joseph R. Cerami, “Deterrence and Competitive Strategies: A New Look at an Old Concept,” in *Deterrence in the 21st Century*, ed. Max G. Manwaring, 109-123 (London: Frank Cass and Company Limited: 2001), 109.y

¹⁷⁹ *Wikipedia*, http://en.wikipedia.org/wiki/Deterrence_theory; “Deterrence Theory,” Internet; accessed 13 April, 2006.http://en.wikipedia.org/wiki/Deterrence_theory

doing that which it might otherwise do.”¹⁸⁰ They subsequently added that in order for deterrence to be successful, it requires both parties because deterrence does not just exist based on capabilities alone; a nation must choose to be deterred.¹⁸¹

In order for a nation to “choose to be deterred” two conditions must be met. The first condition is that the nation targeted for deterrence must believe that if it does something untoward such as defying United Nations resolutions, developing WMD or passing WMD off to terrorist or rogue organizations, it will be caught.¹⁸² If this nation perceives loopholes then it will no longer be deterred. The second condition is that the targeted country must truly believe that the nation(s) attempting deterrence has the determination, credibility and ability to carry out the perceived threat.¹⁸³ These two conditions will be assessed as they existed in Iraq in 2003 prior to the war.

Condition 1 – Effective Detection

During the Cold War, detection of enemy actions was relatively simple because any threatening activity usually included large scale movements and easily identifiable signals. Army, navy and air force movements were tracked and monitored, and sufficient

¹⁸⁰ Robert H. Dorff and Joseph R. Cerami, “Deterrence and Competitive Strategies: A New Look at an Old Concept,” in *Deterrence in the 21st Century*, ed. Max G. Manwaring, 109-123 (London: Frank Cass and Company Limited: 2001), 109.

¹⁸¹ Robert H. Dorff and Joseph R. Cerami, “Deterrence and Competitive Strategies: A New Look at an Old Concept,” in *Deterrence in the 21st Century*, ed. Max G. Manwaring, 109-123 (London: Frank Cass and Company Limited: 2001), 111.

¹⁸² Michael R. Eastman and Robert B. Brown, “Security Strategy in the Grey Zone: Alternatives for Preventing WMD Handoff to Non-State Actors,” in *Defeating Terrorism: Shaping the New Security Environment*, ed. by Russell D. Howard and Reid L. Sawyer, 88-102 (Guilford: McGraw-Hill/Dushkin, 2004), 92.

¹⁸³ Michael R. Eastman and Robert B. Brown, “Security Strategy in the Grey Zone: Alternatives for Preventing WMD Handoff to Non-State Actors,” in *Defeating Terrorism: Shaping the New Security Environment*, ed. by Russell D. Howard and Reid L. Sawyer, 88-102 (Guilford: McGraw-Hill/Dushkin, 2004), 92.

technology existed to detect launches of nuclear missiles. 9/11, however, demonstrated a significant gap in the ability to detect post-Cold War threats. The most significant threats were no longer large scale armies, navies or air forces, but international terrorists who did not wear a uniform, or require massive military might, to cause catastrophic harm. The ability to detect the handoff of WMD to a terrorist organization would be exceptionally difficult to achieve since no one has an unblinking eye that can see everything that transpires throughout the world at all times.¹⁸⁴

Assessment. During the period of UNSCOM from 1991 to 1998 there were some successes in detecting Saddam's proscribed programs. These successes were achieved through the work of weapons inspectors who, when they were able to perform their duties, were quite effective. These weapons inspectors will be the first to admit, however, that truly effective detection and verification required the forthright participation of Iraq which they never received. This lack of participation by Iraq, and Saddam's efforts to hide programs, reduced the credibility and confidence of UNSCOM's detection abilities.¹⁸⁵

The possibility of being detected did not appear to be a barrier to Saddam's efforts to continue proscribed programs, demonstrating that he believed he would not be caught.

¹⁸⁴ Michael R. Eastman and Robert B. Brown, "Security Strategy in the Grey Zone: Alternatives for Preventing WMD Handoff to Non-State Actors," in *Defeating Terrorism: Shaping the New Security Environment*, ed. by Russell D. Howard and Reid L. Sawyer, 88-102 (Guilford: McGraw-Hill/Dushkin, 2004), 96.

¹⁸⁵ Charles Duelfer, "The Inevitable Failure of Inspections in Iraq," *Arms Control Today* 32, no. 7 (Sep, 2002): 11.

Examples of his proscribed activity included hiding his nuclear and biological weapons programs and continuing his missile development activity.¹⁸⁶

After 1998, the world's ability to detect what proscribed programs Saddam was pursuing was significantly diminished due to the eviction of weapons inspectors from Iraq. This lack of visibility and presence in Iraq led United Nations weapons inspectors, and numerous intelligence agencies, to believe that Saddam had the necessary components and technical knowledge to build a nuclear bomb in the near future.¹⁸⁷ As an example, a German intelligence report in 2000 indicated that Saddam could have three nuclear bombs by 2005.¹⁸⁸

It is largely due to the lack of credible detection capabilities that Saddam remained a threat over a decade after the first Gulf War. With Saddam's potential WMD capability, his ties to terrorist organizations, and his disdain for the United States there remained the serious concern that Saddam may pass off WMD to terrorist organizations to effect attacks upon the United States or to improve his power in the Persian Gulf region.

Prognosis. Continuing to attempt to detect Saddam's WMD programs or his transfer of proscribed items to terrorist organizations would not have been a rational approach. The world's ability to detect what Saddam was doing was dubious at best.

¹⁸⁶ Details of these activities are provided in earlier sections of this paper.

¹⁸⁷ Robert Kagan and William Kristol, "What to do About Iraq," in *The Iraq Reader: History, Documents, Opinions*, ed. Micah L. Sifry and Christopher Cerf, 243-249 (New York: Touchstone, 2003), 244.

¹⁸⁸ Robert Kagan and William Kristol, "What to do About Iraq," in *The Iraq Reader: History, Documents, Opinions*, ed. Micah L. Sifry and Christopher Cerf, 243-249 (New York: Touchstone, 2003), 244.

Although, under threat of war by the United States in 2002, he allowed weapons inspectors to return to Iraq and promised cooperation, his record indicated that as soon as the United States backed away from the brink of war and the superficial solidarity of the Security Council weakened, he would return to his practice of deceit and eventual removal of the inspectors once again.¹⁸⁹ Even if UNMOVIC were able to determine that Iraq was disarmed there would remain the requirement for long term monitoring of Iraqi weapons programs. To believe that Saddam would allow this monitoring for any period of time would mean ignoring history and relying on hope. As Thomas Nichols explained in 2003, “. . . Saddam has now established, permanently and by his own doing, that he can never be trusted, and that no agreement with him now or in the future has any realistic hope of being observed.”¹⁹⁰

The prognosis of any long term confidence in the ability to detect proscribed activity within an Iraq under Saddam Hussein was doubtful. This option would have entailed a great deal of risk given the wide range of options Saddam would have for continuing his proscribed programs and/or proliferating proscribed items to terrorist organizations and other rogue nations.¹⁹¹

Condition 2 – Credible Threat of Punishment

¹⁸⁹ Charles Duelfer, “The Inevitable Failure of Inspections in Iraq,” *Arms Control Today* 32, no. 7 (Sep, 2002), 11.

¹⁹⁰ Thomas M. Nichols, “Just War, Not Prevention,” *Ethics & International Affairs* 17, no. 1 (2003), 26.

¹⁹¹ Michael R. Eastman and Robert B. Brown, “Security Strategy in the Grey Zone: Alternatives for Preventing WMD Handoff to Non-State Actors,” in *Defeating Terrorism: Shaping the New Security Environment*, ed. by Russell D. Howard and Reid L. Sawyer, 88-102 (Guilford: McGraw-Hill/Dushkin, 2004), 92.

The second condition of a credible threat of punishment is equally important in a deterrent strategy. A nation, in order to be deterred, must believe that the repercussions for its proscribed actions would be such that it would not be worth trying.¹⁹² In other word, the probable costs must outweigh the potential benefits. It is not enough for the deterring nation(s) to have the capability to react to transgressions, they must also have the clear resolve to use that capability.

Assessment. The evidence provided in the earlier sections of this paper demonstrated that, even when Saddam was detected violating resolutions, continuing proscribed weapons programs, interfering with and banning weapons inspectors, or threatening to take inappropriate action, he was not severely punished. The United Nations, and particularly the United States, certainly had the required capabilities to use force to ensure Iraqi compliance. What was lacking was the resolve to use the available capabilities to ensure compliance. This lack of resolve was rooted in the United Nation's preference for non-violence and concessions, selfish national agendas, and the United States' reluctance to get engaged in large scale combat for fear of casualties.

Saddam defeated the deterrent requirement of credible use of force by dividing his opponents. He did this by using illicit and legal trade with countries such as Russia and France to buy their support.¹⁹³ The more time passed after the first Gulf War, the more

¹⁹² Michael R. Eastman and Robert B. Brown, "Security Strategy in the Grey Zone: Alternatives for Preventing WMD Handoff to Non-State Actors," in *Defeating Terrorism: Shaping the New Security Environment*, ed. by Russell D. Howard and Reid L. Sawyer, 88-102 (Guilford: McGraw-Hill/Dushkin, 2004), 92.

¹⁹³ Kenneth M. Pollack, *The Threatening Storm: The Case for Invading Iraq* (New York: Random House, 2002), 225.

emboldened Saddam became, and the less credible the threat of serious United Nations and United States response became. Nothing highlights this assertion more than the fact that weapons inspectors were evicted in 1998, yet no significant effort was made to restore Iraq's compliance prior to 2002.

Prognosis. The longer term prognosis for the continuing threat of use of force in response to Iraq's transgressions beyond 2002/2003 was poor. This was especially the case with the United Nations which, wanting to avoid conflict at any cost, would continue to prefer concessions, vice retaliation or punishment, regardless of Iraqi transgressions. Nations with economic ties to Iraq would be reluctant to use, or support, force for fear of losing substantial contracts.¹⁹⁴ The fact that Saddam had economic ties with some neighboring countries and three of the Permanent Five of the Security Council seriously degraded the possibility of a credible threat of punishment by the international community.¹⁹⁵ For its part, the United States would likely continue to react with the use of force, but it would be limited and, with time, would be reduced even more. Additionally, any use or threatened use of force by the United States would inevitably result in some condemnation by other nations and concessions for Iraq.

Another obstacle to the credible threat of the use of force was Saddam and the Iraqi political culture. In this culture, backing down in the face of a threat was seen as a

¹⁹⁴ Kenneth M. Pollack, *The Threatening Storm: The Case for Invading Iraq* (New York: Random House, 2002), 226.

¹⁹⁵ Frank P. Harvey, *Smoke and Mirrors: Globalized Terrorism and the Illusion of Multilateral Security* (Toronto: University of Toronto Press, 2004), 76.

weakness that would bring about ‘shame and humiliation’.¹⁹⁶ Further, it could lead to the loss of support from loyalists against other challengers which, in turn, could lead to the fall of the regime.¹⁹⁷ Hence, just the threat of force, or its limited and restrained use, would not be sufficient to deter Saddam. This approach would actually make Saddam appear stronger and embolden him.

Costs of Deterrence

The costs of a continued deterrent strategy would be similar to those of a continued containment strategy explained in the previous section of this chapter.¹⁹⁸ A continued deterrent strategy would mean leaving the regime of Saddam in place with the resultant continued suffering of the Iraqi population. There would be significant and continuing costs incurred by the Iraqi economy, as well as the costs associated with both the detection and enforcement portion of this strategy. There would inevitably be recurrent military conflicts as the United States reacted to Iraqi transgressions and enforced the “No Fly Zone.” Iraq would still not have adhered to Security Council resolutions and the authority and credibility of this organization would be degraded further. The United States would still be required to position its forces in the Persian Gulf, with the resultant effects of Islamic irritation and potential instability in Saudi Arabia. Tensions between world powers would continue to be heightened on a recurring

¹⁹⁶ Kenneth M. Pollack, *The Threatening Storm: The Case for Invading Iraq* (New York: Random House, 2002), 256

¹⁹⁷ Kenneth M. Pollack, *The Threatening Storm: The Case for Invading Iraq* (New York: Random House, 2002), 256

¹⁹⁸ For greater detail on the costs see the sub-section on ‘Costs of Containment’ in the ‘THE OTHER OPTIONS’ Chapter.

basis as a result of national interests taking priority over global security and divergent beliefs on how to react to certain situations. All this would further erode respect for the United Nations, which would be seen as contributing to the suffering of the Iraqi population, while not being capable of influencing the actions of Iraq or other nations, addressing the humanitarian and human rights abuses in Iraq, or achieving consensus on international issues. This option also has the additional potential cost of Saddam developing, obtaining, using or transferring WMD, and the impact this could have in the Persian Gulf region as well as on the global economy.

Summary and Overall Prognosis

By itself, deterrence can be the riskiest of policy options due to the dangerous gamble in assuming one's adversary can be deterred.¹⁹⁹ Detection would have had to rely on the use of weapons inspectors and monitoring that Saddam would not tolerate for long. It would have also required the complete participation of Iraq to ensure confidence in the verification process, and this was unlikely. Saddam had turned the United Nations against itself in the decade prior to 2002, and he would inevitably do so again beyond the adoption of SCR 1441. History had demonstrated that the United Nations would not have been able to maintain its unified resolve to ensure Iraqi compliance with Security Council resolutions for any lengthy period of time. To believe that this would change with the unanimous adoption of SCR 1441 is to hope beyond hope. Charles Duelfer summarized the potential for success as follows:

¹⁹⁹ Kenneth M. Pollack, *The Threatening Storm: The Case for Invading Iraq* (New York: Random House, 2002), 279-280.

Is it realistic to think that the Security Council would be able to sustain the will to impose drastic penalties if Iraq proceeded to limit inspector access gradually or even tossed the inspectors out altogether? No. Setting down this path yet again would be an exercise in political delusion. Moreover, given the political advantages that Bagdad [sic] would gain from making temporary concessions, reinstalling inspectors would actually be counterproductive in the long term for our nonproliferation goals.²⁰⁰

For its part, the United States, having advanced to the brink of war and stated its condition of regime change in Iraq, could not allow Saddam to remain in power. If the United States backed down from this ultimatum it would clearly signal to Saddam that, although they had the capability, America lacked the resolve to enforce its threats. This failure in providing a credible threat of punishment would not only be recognized by Saddam, but also by other potential rogue nations and adversaries.²⁰¹ To have selected a deterrent approach would have signaled that it was the United Nations and the United States who were deterred. To that end, a deterrent strategy was no longer a reasonable option for dealing with Iraq under Saddam Hussein.

²⁰⁰ Charles Duelfer, "The Inevitable Failure of Inspections in Iraq," *Arms Control Today* 32, no. 7 (Sep, 2002): 11.

²⁰¹ Kenneth M. Pollack, *The Threatening Storm: The Case for Invading Iraq* (New York: Random House, 2002), 279.

Chapter 3 – PREEMPTIVE AND PREVENTIVE WAR

Preemptive war has been described as a ‘quick draw’ executed when an opponent detects an enemy is about to attack.²⁰² Preventive war, on the other hand, occurs “before perceived threats mature.”²⁰³ David Luban explains the close link between these two concepts in asserting that, “. . . preventive war . . . [is] a preemptive war in which the imminence requirement is relaxed.”²⁰⁴ This chapter will explore these two concepts and how they apply to the war in Iraq.

The United States 2002 National Security Strategy states, “To forestall, or prevent such hostile acts [a sufficient threat to national security] by our adversaries, the United States will, if necessary, act preemptively”.²⁰⁵ The words, ‘prevent’ and ‘preemptively’, used as they are in this document, lead to some confusion and discussion over whether the 2003 war in Iraq should be termed a “Preemptive” or a “Preventive” war. Lawrence Freedman explains that to term it preemption would be incorrect:

If the United States attacks facilities and overthrows regimes before these dangers have had a chance to emerge, such action will be described as preemption because that is the language currently in vogue, but this language would be incorrect. The relevant concept here is prevention.²⁰⁶

²⁰² Simon Porter, *The Bush Doctrine: Where it Came From, What it Means for Europe and Recommendations for the Future* (Canberra: Australian Defence College Monograph Series, No. 4, 2004), 6.

²⁰³ John M. Collins, “U.S. Preemptive War Policies,” *United States Naval Institute Proceedings* 131, iss. 12 (Dec 2005): 2.

²⁰⁴ David Luban, “Preventive War,” *Philosophy and Public Affairs* 32, no. 3 (Summer 2004): 213.

²⁰⁵ United States, The White House, “The National Security Strategy of the United States of America (September 2002),” <http://www.whitehouse.gov/nsc/nss.html>; Internet; accessed 9 September 2005.

Preemptive War

Discussion

“Preemption is a more desperate strategy employed in the heat of crisis”²⁰⁷ after enemy “attacks seem imminent.”²⁰⁸ For a preemptive war strategy to be successful there are two main requirements. The first is the ability to detect when a threat has become imminent, and the second is the ability to act prior to the threat being realized.²⁰⁹ The requirements for detecting an imminent threat include both the assessment of an adversary’s capabilities as well as his intent.²¹⁰ This requires a great deal of intelligence and credible analysis. In spite of all of the technology available to assist in this intelligence gathering and analysis, it is not always possible to determine the exact nature of an adversary’s capabilities and it will always require a subjective assessment to predict an adversary’s intent.²¹¹ In the case of Iraq, it was not possible to determine with certainty how imminent the threat was. The difficulty in making this assessment is

²⁰⁶ Lawrence Freedman, “Prevention, Not Preemption,” *The Washington Quarterly* 26, no. 2 (Spring 2003): 113.

²⁰⁷ Lawrence Freedman, “Prevention, Not Preemption,” *The Washington Quarterly* 26, no. 2 (Spring 2003): 107.

²⁰⁸ John M. Collins, “U.S. Preemptive War Policies,” *United States Naval Institute Proceedings* 131, iss. 12 (Dec 2005): 2.

²⁰⁹ Lawrence Freedman, “Prevention, Not Preemption,” *The Washington Quarterly* 26, no. 2 (Spring 2003): 106.

²¹⁰ Michael R. Eastman and Robert B. Brown, “Security Strategy in the Grey Zone: Alternatives for Preventing WMD Handoff to Non-State Actors,” in *Defeating Terrorism: Shaping the New Security Environment*, ed. by Russell D. Howard and Reid L. Sawyer, 88-102 (Guilford: McGraw-Hill/Dushkin, 2004), 92.

²¹¹ Arnold Wolfers, “‘National Security’ As An Ambiguous Symbol,” in *National and International Security*, ed. Michael Sheehan, 3-24 (Aldershot, Burlington VT: Ashgate, 2000), 7. Arnold Wolfers states that the chance of future attack never can be measured “objectively”; it must always remain a matter of subjective evaluation and speculation”

highlighted by the fact that, despite the best efforts of the IAEA, UMSCOM and UNMOVIC, as well as a decade of attempting to disarm Iraq of its WMD, in 2003 the world still believed, that Saddam maintained such a capability.²¹² Now that threats are manifested in WMD, rogue nations and non-state actors the detection requirement has become exceptionally difficult to achieve.

While it is difficult to assess an enemy's capability, it is much more difficult to assess something as subjective as an enemy's intent. In assessing intent it is necessary to make assumptions based on the actions and behavior of the potential aggressor.²¹³ Based on Saddam's history, it was not unreasonable to suspect that he was a threat to peace and security in the region and potentially to the United States. Proof that he was an imminent threat, however, was scant. On the other hand, the term 'imminent' could be interpreted in various fashions by different nations based on their willingness to live with a threat. In the end, neither the world community nor the United States knew exactly what Saddam's capabilities were, much less his actual intentions.

The second requirement of a preemptive strategy is to be able to act "at some point between the moment when an enemy decides to attack – or, precisely, is perceived to be about to attack – and when the attack is actually launched."²¹⁴ This requirement necessitated that a significant United States military force remain in the Persian Gulf area in order to be in a position to detect and, if necessary, strike before the threat was realized. This option would have had to be used in conjunction with the other strategies

²¹² See United Nations Resolutions Section of the Legal Chapter.

²¹³ Wolfers, "'National Security' As An Ambiguous Symbol". . . ,7. Arnold Wolfers states that ". . . the attitude and behavior of those from whom the threat emanates are of prime importance."

²¹⁴ Lawrence Freedman, "Prevention, Not Preemption" *The Washington Quarterly* 26, no. 2 (Spring 2003): 106.

of deterrence and/or containment, highlighting the fact that this strategy clearly leaves the initiative with the threatening nation.

Prognosis

A Preemptive strategy based on a strict interpretation of ‘imminence’ holds great risk. This risk is embedded in the requirement to detect and assess the threat before it is realized. Experience has demonstrated that WMD activity can occur undetected, as it did with Saddam’s nuclear program that evolved despite the monitoring of the IAEA.²¹⁵ Additionally, the fact that the world still believed that Saddam had WMD after twelve years of international efforts to verify that he had disarmed highlights the difficulties of the detection requirement. Finally, while the movement of large armies would be easy to detect, the transfer of a WMD to a non-state actor or terrorist would be very difficult to detect based on the myriad methods this could be accomplished.²¹⁶

A preemptive strategy, because it relies on the other strategies of deterrence and containment, largely shares the same costs.²¹⁷ So, in the end, this strategy would leave the status quo in Iraq and the initiative with Saddam Hussein. It would not improve peace and security within the region, or for the United States, and it would allow Saddam one more reprieve.

²¹⁵ Khidhir Hamza, “Saddam’s Nuclear Program.” in *The Saddam Hussein Reader: Selections From Leading Writers On Iraq*, edited by Turi Munthe, 417-430 (New York: Thunder’s Mouth Press, 2002), 425-427.

²¹⁶ Michael R. Eastman and Robert B. Brown, “Security Strategy in the Grey Zone: Alternatives for Preventing WMD Handoff to Non-State Actors,” in *Defeating Terrorism: Shaping the New Security Environment*, ed. by Russell D. Howard and Reid L. Sawyer, 88-102 (Guilford: McGraw-Hill/Dushkin, 2004), 94.

²¹⁷ See Costs of Containment Sub-Section in The Other Options Chapter.

Preventive War

This section will explore the strategy of preventive war and provide a test to assess the legitimacy of this option. Thomas Nichols describes preventive war as, “violent intervention in the affairs of sovereign states, and forced regime change”.²¹⁸ Lawrence Freedman expands this description by adding that, “Prevention exploits existing strategic advantages by depriving another state of the capability to pose a threat and/or eliminating the state’s motivation to pose a threat through regime change.”²¹⁹ Unlike preemptive war, which is a ‘crisis’ action precipitated by the imminence of a threat; preventive war aims to remove the threat before it becomes imminent or a crisis.²²⁰

Preventive war takes the initiative away from the adversary but also creates a concern with respect to the legitimacy and legality of the act. Using force against a sovereign nation based on an “emerging” threat is far more difficult to justify than using force based on a clear and imminent threat. Allowing any country to conduct preventive war on any other country at any time would certainly not generate greater peace and security in the world. International law provides some safeguards against this eventuality, however, the law can be interpreted in many ways and there is little enforcement in the international sphere.²²¹ For this reason, a number of academics have

²¹⁸ Thomas M. Nichols, “Anarchy and Order in the New Age of Prevention,” *World Policy Journal* 22, no. 3 (Fall 2005): 1.

²¹⁹ Lawrence Freedman, “Prevention, Not Preemption” in *The Washington Quarterly* 26, no. 2 (Spring 2003): 106.

²²⁰ Lawrence Freedman, “Prevention, Not Preemption” in *The Washington Quarterly* 26, no. 2 (Spring 2003): 106.

proposed caveats to preventive war that incorporate more than just an emerging threat as justification for legitimacy. For example, Michael Ignatieff believes that from an ethical perspective, the possession of WMD when coupled with humanitarian intervention can provide sufficient justification for preventive war.²²² Similarly, Christopher Hitchens has suggested that the combination of human rights violations, efforts to acquire weapons of “genocide” and involvement with the “underworld of terror and destabilization”, are grounds for an intervention.²²³

President Bush provided a number of justifications for the war in Iraq in 2003. First, he stated that the war was necessary to remove the threat of Saddam Hussein based on his perceived WMD capabilities, intent, and ties to terrorists. Next he provided a legal argument that the invasion was necessary to enforce United Nations resolutions and authority. Finally, he noted the requirement to remove a brutal regime with terrible human rights violations.²²⁴ Some believe that by providing the varied justifications for the war the President eroded the legitimacy for the invasion. In fact, the opposite may be true in that the separate justifications actually provided legitimacy to the act.

²²¹ Paul Christopher, *The Ethics Of War And Peace: An introduction To Legal And Moral Issues*, 3rd ed. (New Jersey: Pearson Prentice Hall, 2004), 107.

²²² Michael Ignatieff, “The Challenges of American Imperial Power,” in *Naval War College Review* 56, iss. 2 (Spring 2003): 62.

²²³ Christopher Hitchens, “Why I am For Regime Change,” in *The Iraq Reader: History, Documents, Opinions*. Edited by Micah L. Sifry and Christopher Cerf, 440-444, (New York: Touchstone, 2003), 442. Christopher Hitchens wrote the *Nation’s* biweekly “Minority Report” column for two decades and is the author of a number of books including, *Why Orwell Matters*, and *No One Left to Lie to: The Triangulation of William Clinton*.

²²⁴ David Luban, “Preventive War,” *Philosophy and Public Affairs* 32, no. 3 (Summer 2004): 207.

To examine this assertion this paper will use a test proposed by Irving Brecher²²⁵ to consider the case of the 2003 Iraq invasion and regime change. Irving Brecher, in his article, “In Defence of Preventive War: A Canadian Perspective,” proposes a test that can provide legitimacy to the act of preventive war which he asserts is necessary in order to prevent the unconstrained use of force and eventual anarchy. The test itself includes four criteria as follows: (1) Gross human rights violations; (2) Evidence of WMD; (3) Close ties with terrorist organizations; and (4) International judgment and approval.

1st Criterion – Gross Human Rights Violations

The first criterion of this legitimacy test for Preventive War requires that there be evidence that the national government is brutalizing its own people and committing gross human rights abuses.²²⁶ Saddam Hussein and his regime had a long history of brutalizing the Iraqi population and committing such abuses. Examples were provided in earlier sections of this paper.²²⁷ A holistic summary of Saddam’s human rights violations was provided a year before the war by the United Nations Commission on Human Rights, in Resolution 2002/15. This April 2002 resolution strongly condemned the:

. . . systematic, widespread, and extremely grave violations of human rights and of international humanitarian law by the Government of Iraq, resulting in an all-pervasive repression and oppression sustained by broad-based discrimination and widespread terror; the repression

²²⁵ Irving Brecher, “In Defence of Preventive War: A Canadian Perspective,” <http://proquest.umi.com/pqdweb?index=65&did=545429131&SrchMode=1&sid=26&Fmt=3&VInst=PROD&VType=PQD&RQT=309&VName=PQD&TS=1137976831&clientId=1711>; Internet: accessed 14 April, 2006.

²²⁶ Irving Brecher, “In Defence of Preventive War: A Canadian Perspective,” <http://proquest.umi.com/pqdweb?index=65&did=545429131&SrchMode=1&sid=26&Fmt=3&VInst=PROD&VType=PQD&RQT=309&VName=PQD&TS=1137976831&clientId=1711>; Internet: accessed 14 April, 2006.

²²⁷ See Humantiarin Argument section of the Legal Argument Chapter.

faced by any kind of opposition, in particular the harassment and intimidation of and threats against Iraqi opponents living abroad and members of their families; summary and arbitrary executions, including political killings and the continued so-called clean-out of prisons, the use of rape as a political tool, as well as enforced or involuntary disappearances, routinely practiced arbitrary arrests and detention, and consistent and routine failure to respect due process and the rule of law; [and] widespread, systemic torture and the maintaining of decrees prescribing cruel and inhuman punishment as a penalty for offences.²²⁸

In considering the Iraqi human rights violations provided in earlier sections of this paper, along with the United Nations Commission of Human Rights resolution, there is ample justification to assess that the first criterion of this test was met.

2nd Criterion – Evidence of WMD

The second criterion of this legitimacy test for Preventive War requires compelling and credible evidence of a nation's possession, or intense efforts to acquire, WMD.²²⁹ Much has been written since 2003 about how the American and British intelligence communities and administrations had embellished Iraq's WMD capability in an effort to gain support for the war. What is often overlooked, however, is that most nations believed Iraq had WMD prior to the United States and Britain providing details as part of their efforts to gain support for the war.

²²⁸ United Nations Office of the High Commissioner For Human Rights, "Situation of Human Rights in Iraq: Commission on Human Rights Resolution 2002/15," http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2002-15.doc; Internet; accessed 14 April, 2006.

²²⁹ Irving Brecher, "In Defence of Preventive War: A Canadian Perspective," <http://proquest.umi.com/pqdweb?index=65&did=545429131&SrchMode=1&sid=26&Fmt=3&VInst=PRO D&VType=POD&ROT=309&VName=POD&TS=1137976831&clientId=1711>; Internet: accessed 14 April, 2006.

Much of the world's belief, and certainly that of the United States and Britain, was based on the evidence, assessment and predictions provided by United Nations weapons inspectors.²³⁰ It was their assessment, based on efforts to verify Saddam's disarmament, that Iraq remained in violation of SCR 687 and numerous other SCRs, including 1441. These assessments include Ambassador Rolf Ekeus' 1999 statement that, "it seemed clear that Iraq may still retain chemical agents and weapons as well as production equipment," and that ". . . concerns continue that Iraq is withholding enough proscribed weapons, components and supporting equipment to constitute a missile force."²³¹ Former UNSCOM Executive Director Richard Butler was very frank in his 2000 assessment of Iraq's capabilities and intent when he stated:

While the full nature and scope of his [Saddam] current programs cannot be known *precisely* because of the absence of inspections and monitoring, it would be foolish in the extreme not to assume that he is developing long-range missile capability, at work again on building nuclear weapons, and adding to the chemical and biological warfare weapons he concealed during the UNSCOM inspection period. This reflects his track record, capabilities and intentions, and the scattered evidence that continues to emerge outside Iraq.²³²

Hans Blix, although critical of the American war since 2003, also made his contribution to the belief that Saddam had not disarmed and possibly retained a WMD capability. As the Executive Chairman of UNMOVIC, Blix was charged, in SCR 1441,

²³⁰ James P. Rubin, "Stumbling Into War: A Diplomatic Postmortem," *Foreign Affairs* 82, no. 5 (September/October, 2003): 64.

²³¹ Graham S. Pearson, *The UNSCOM Saga: Chemical and Biological Weapons Non-Proliferation* (New York: St. Martin's Press, Inc., 1999), XIV. Ambassador Rolf Ekeus was the Executive Chairman of UNSCOM from 1991 to 1997.

²³² Richard Butler, *The Greatest Threat: Iraq, Weapons of Mass Destruction, and the Crisis of Global Security* (New York: Public Affairs, 2000), XVII. Richard Butler is a former Australian Ambassador to the UN and former Executive Chairman of UNSCOM from 1997 to 1999.

with reporting to the Security Council on the status of Iraq's WMD disarmament.²³³ His reports of December 2002, 27 January 2003, 14 February 2003 and 7 March 2003, have been explained earlier in the Legal Chapter of this paper.²³⁴ These reports noted Blix's contention that Iraq was still reluctant to accept disarmament and detailed a number of significant concerns with respect to proscribed weapons and documentation. Blix summarized his assessment when he acknowledges that, "Like most others, we at UNMOVIC, certainly *suspected* that Iraq might still have hidden stocks of chemical and biological weapons."²³⁵

In the Spring of 2002, a group of nearly twenty former UNSCOM inspectors were asked whether anyone doubted that Iraq was operating a secret centrifuge plant. No one doubted this assertion and some added that they believed that Saddam was also operating a secret calutron plant (to separate uranium isotopes).²³⁶ Many nations, some of whom would eventually oppose the war, also made assertions of a WMD capability in Iraq.²³⁷ In fact, German Federal Intelligence Services concluded in 2002 that Iraq might be able to build a nuclear weapon within three years.²³⁸ The intelligence communities of Russia and France held similar views to that of the United States National Intelligence Estimate

²³³ United Nations Security Council, "Resolution 1441," <http://daccessdds.un.org/doc/UNDOC/GEN/N02/682/26/PDF/N0268226.pdf?OpenElement>; Internet; accessed 18 April, 2006.

²³⁴ See sub-section on 'United Nations Resolutions' in the 'LEGAL ARGUMENT' Chapter.

²³⁵ Hans Blix, *Disarming Iraq* (New York: Pantheon Books, 2004), 264.

²³⁶ Kenneth M. Pollack, "Spies, Lies, and Weapons: What Went Wrong," *The Atlantic Monthly* 293, iss 1 (Jan/Feb 2004): 80.

²³⁷ Kenneth M. Pollack, "Spies, Lies, and Weapons: What Went Wrong," *The Atlantic Monthly* 293, iss 1 (Jan/Feb 2004): 80.

²³⁸ Kenneth M. Pollack, "Spies, Lies, and Weapons: What Went Wrong," *The Atlantic Monthly* 293, iss 1 (Jan/Feb 2004): 80.

of 2002, believing that Iraq had continued its WMD program to include chemical, biological and missile capabilities.²³⁹

Adding to the various international assessments of Iraq's WMD capabilities and intent, were the actions and comments of Saddam Hussein and his regime. In April 1991, documents revealed that an Iraqi senior committee had ordered WMD facilities to be hidden from UN inspectors.²⁴⁰ Over the next 12 years, Saddam demonstrated his intent to maintain a WMD capability through his undeclared nuclear weapons program (discovered shortly after the First Gulf War), his attempts to hide his biological warfare program, his attempts to hide his VX programs, and his continuing efforts to develop missiles with ranges exceeding permissible limits set out in SCR 687.²⁴¹ Iraq also consistently interfered with, and eventually evicted, United Nations weapons inspectors, and was unable, or unwilling, to provide necessary documentation to verify the destruction of its WMD. Further, Saddam stated publicly in 2000 that:

If the world tells us to abandon all our weapons and keep only swords, we will do that. We will destroy all the weapons, if they destroy their weapons. But if they keep a rifle and then tell me that I have the right to possess only a sword, then we would say no. As long as the rifle has become a means to defend our country against anybody who may have designs against it, then we will try our best to acquire the rifle.²⁴²

²³⁹ Kenneth M. Pollack, "Spies, Lies, and Weapons: What Went Wrong," *The Atlantic Monthly* 293, iss 1 (Jan/Feb 2004): 80.

²⁴⁰ Charles Duelfer, "Arms Reduction: The Role of International Organizations, the UNSCOM Experience," *Journal of Conflict & Security Law* 5, no. 1 (June 2000): 109.

²⁴¹ United Nations Security Council, "Resolution 687," <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/596/23/IMG/NR059623.pdf?OpenElement>; Internet; accessed; 9 April, 2006.

²⁴² Kenneth M. Pollack, "Spies, Lies, and Weapons: What Went Wrong," *The Atlantic Monthly* 293, iss 1 (Jan/Feb 2004), 86.

It would not be a great leap of logic to believe that when Saddam said ‘rifle’, he was referring to WMD and possibly nuclear weapons.²⁴³

Despite what has emerged, or not emerged, in the hunt for WMD in Iraq since the end of the war, it was almost universally believed prior to the invasion in March 2003 that Iraq possessed some WMD capability. This belief was based on not just United States intelligence, but on credible information and assessment of United Nations weapons inspectors including Rolf Ekeus, Richard Butler and Hans Blix, as well as numerous national intelligence services. Saddam Hussein and the actions of his regime only served to strengthen this belief of WMD capability. In considering the evidence available in 2002/2003, along with the behavior and history of Saddam Hussein, there is ample justification to assess that the second criterion of this test was met.

3rd Criterion – Close Ties With Terrorist Organizations

The third criterion of this legitimacy test for Preventive War requires a clear probability that Iraq had close ties with terrorist organizations operating across or within international borders.²⁴⁴ This criterion is certainly a product of the 9/11 attacks on the United States and the subsequent realization that the dangers posed by terrorists with WMD was real.²⁴⁵

²⁴³ Kenneth M. Pollack, “Spies, Lies, and Weapons: What Went Wrong,” *The Atlantic Monthly* 293, iss 1 (Jan/Feb 2004): 86.

²⁴⁴ Irving Brecher, “In Defence of Preventive War: A Canadian Perspective,” <http://proquest.umi.com/pqdweb?index=65&did=545429131&SrchMode=1&sid=26&Fmt=3&VInst=PRO D&VType=PQD&RQT=309&VName=PQD&TS=1137976831&clientId=1711>; Internet: accessed 14 April, 2006.

²⁴⁵ United States. The White House. “The National Security Strategy of the United States of America (September 2002),” <http://www.whitehouse.gov/nsc/nss.html>; Internet; accessed 9 September

Evidence currently suggests that Saddam was not directly tied to the 9/11 attacks however, Iraqi intelligence officials had met with al Qaeda operatives prior to 2001.²⁴⁶ Of significant note is that even without formal ties to al Qaeda, Saddam's regime was a known supporter of terrorism and had operated terrorist training camps within Iraq.²⁴⁷ As late as 2000, these camps trained both Iraqis and Islamists from other nations for terrorist operations abroad.²⁴⁸ In addition, Saddam had previously provided safe haven to Abu Nidal, a known international terrorist, and had most recently pledged \$25,000 to the families of Palestinian suicide bombers.²⁴⁹

No longer able to stand up to the United States in a conventional war, it was not inconceivable to believe that the Iraqi regime could provide, at a minimum, financial support, and potentially WMD, to terrorist organizations to attack the United States directly, or to create instability in the strategically important region of the Persian Gulf. In considering the evidence of Iraqi ties to terrorist organizations, Saddam's history of support to terrorists, his ambitions and quest for power, and the perceived WMD threat

2005. The danger posed by this combination is expressed in the United States 2002 National Security Strategy as follows: "The greatest danger our nation faces lies at the crossroads of radicalism and technology."

²⁴⁶ United States National Commission on Terrorist Attacks, *The 9/11 Commission Report: Final Report of the Commission on Terrorist Attacks Upon the United States* (New York: W.W. Norton & Company, n.d.), 61.

²⁴⁷ Robert Kagan and William Kristol, "What to do About Iraq," in *The Iraq Reader: History, Documents, Opinions*, ed. Micah L. Sifry and Christopher Cerf, 243-249 (New York: Touchstone, 2003), 245.

²⁴⁸ David Rose, "Inside Saddam's Terror Regime," in *The Saddam Hussein Reader: Selections From Leading Writers On Iraq*, ed. Turi Munthe, 464-476 (New York: Thunder's Mouth Press, 2002), 466.

²⁴⁹ Johanna McGeary, "Inside Saddam's World," in *The Saddam Hussein Reader: Selections From Leading Writers On Iraq*, ed. Turi Munthe, 477-485 (New York: Thunder's Mouth Press, 2002), 485.

detailed in the previous section, there is sufficient justification to assess that the third criterion of this test was met.

4th Criterion - International Judgment And Approval²⁵⁰

The fourth criterion of this legitimacy test for Preventive War requires that the nations involved obtained international judgment and approval.²⁵¹ In assigning this criterion, Irving Brecher does not specifically define what international judgment and approval entails. Instead of being specific, he uses the description of “some form of” international judgment and approval.²⁵² He states he uses the term because he does not believe the United Nations is the only body that can provide this approval. Frank Harvey certainly supports this assertion. He explains that the United Nations is not a world power but a “talking shop” that is not “. . . preoccupied with the best interests of humanity as a whole. It is a place of horse trading between narrow national interests, of mutual backscratching and Machiavellian diplomacy.”²⁵³ It is only on the rare occasions

²⁵⁰ The case for United Nations “legal” authority for the war in Iraq was provided in the previous Legal Argument Section of Chapter 1. As with all matters legal there was significant debate as to whether or not the resolutions provided international approval for use of force. For this reason this criterion will be considered from a different perspective.

²⁵¹ Irving Brecher, “In Defence of Preventive War: A Canadian Perspective,” <http://proquest.umi.com/pqdweb?index=65&did=545429131&SrchMode=1&sid=26&Fmt=3&VInst=PROD&VType=PQD&RQT=309&VName=PQD&TS=1137976831&clientId=1711>; Internet: accessed 14 April, 2006.

²⁵² Irving Brecher, “In Defence of Preventive War: A Canadian Perspective,” <http://proquest.umi.com/pqdweb?index=65&did=545429131&SrchMode=1&sid=26&Fmt=3&VInst=PROD&VType=PQD&RQT=309&VName=PQD&TS=1137976831&clientId=1711>; Internet: accessed 14 April, 2006.

²⁵³ Frank P. Harvey, *Smoke and Mirrors: Globalized Terrorism and the Illusion of Multilateral Security* (Toronto: University of Toronto Press, 2004), 64.

when these narrow self interests of member states and the global security requirements coincide that the United Nations can put forth a unified front.

International judgment and approval can be achieved outside of the constraints and limitations of the United Nations. The case of the United States' "Coalition of the Willing" for the invasion of Iraq is a clear example. Contrary to what many critics of the war profess, "This coalition included every major race, religion, and ethnic group in the world and represented populations totaling 1.18 billion people from every continent on the globe . . ." ²⁵⁴ Admittedly, not all these countries provided soldiers to fight in Iraq, but many provided support in the form of logistical, humanitarian, over-flight rights, specialist and intelligence requirements. According to Walter Slocombe, this coalition level of approval, ". . . count[s] for as much as a UN Security Council hamstrung by a veto." ²⁵⁵ In considering the support and the approval provided by Britain and the many other allies in the "Coalition of the Willing", there was sufficient justification to assess that the fourth criterion of this test was met.

Irving Brecher's test demonstrates that a Preventive war strategy in Iraq could be a legitimate course of action. While it was a Preventive war it was not purely so. In my opinion it was a hybrid form of Preventive war that incorporated elements of humanitarian intervention and self defence as well. For that reason, President Bush's multiple justifications for the invasion actually provided the required legitimacy to the war. ²⁵⁶

²⁵⁴ Frank P. Harvey, *Smoke and Mirrors: Globalized Terrorism and the Illusion of Multilateral Security* (Toronto: University of Toronto Press, 2004), 72.

²⁵⁵ Walter B. Slocombe, "Force, Pre-emption and Legitimacy," *Survival* 45, no. 1 (Spring 2003): 123. Walter Slocombe served as United States Under Secretary of Defence for Policy from 1994 to 2001.

A Time to Act

In late 2002 / early 2003, it was evident that Saddam would eventually have to be removed from Iraq. Committing to this endeavour would require a combination of public support, legality / legitimacy, and overwhelming military strength. The circumstances present at that time provided the required window of opportunity. While American public support for a Preventive strategy was not present in the period following the Gulf War, its mood changed in 2001. 9/11 energized American public opinion and provided the support that would be required to proceed with regime change in Iraq.²⁵⁷ This support was a key requirement for initiating this war to remove Saddam but it would not exist in perpetuity. Barring any further gross acts of terror on the United States, the American public opinion and support for such a war would wane over time.

The next component was the legality / legitimacy of this strategy. Previous chapters and sections of this paper have demonstrated that both the legal and legitimacy argument could be made for initiating hostilities and removing the threat and tyranny of Saddam Hussein.²⁵⁸ The final piece was the fact that the United States could provide, either unilaterally or with a coalition, overwhelming military strength. The only capability Saddam could have used to deter the United States was a nuclear weapon of which he did not yet possess. Hence, the window of opportunity for regime change was

²⁵⁶ Based on the author's assessment using Irving Brecher's test.

²⁵⁷ Robert S. Snyder, "The Myth of Preemption: More Than a War Against Iraq," *Orbis* 47, no. 4 (Fall 2003): 656.

²⁵⁸ See 'LEGAL ARGUMENT' Chapter and previous 'Preventive War' Section.

open but could close with a drop in public support, likely to occur over time, or if Saddam should obtain a nuclear capability.

Benefits. The Preventive war option held significant potential benefits when viewed from a 2002/2003 perspective. First of all, it would remove a regime that had “repressed, impoverished and terrorized” its own population for decades.²⁵⁹ None of the other options would achieve this milestone in that they were all based on the position that Saddam and his regime would remain in power. Removal of the regime and allowing the Iraqi population to decide their future through democratic elections could also plant the seed of democracy within the region. Although it was not likely that democracy would occur instantaneously, and could in fact take decades, the removal of Saddam could be the start down this road.²⁶⁰

Removing Saddam would also enable the lifting of sanctions and the rebuilding of the Iraqi economy.²⁶¹ This could include the rejuvenation of Iraq’s oil production capability, which would generate billions of dollars for the Iraqi economy and contribute in a meaningful way to international trade. The removal of sanctions also held the potential to improve Iraqi quality of life and address the terrible decline in health issues and mortality rates discussed earlier.²⁶²

²⁵⁹ Philip H. Gordon, “Bush’s Middle East Vision.” *Survival* 45, iss. 1 (Spring 2003): 159.

²⁶⁰ Philip H. Gordon, “Bush’s Middle East Vision.” *Survival* 45, iss. 1 (Spring 2003): 160.

²⁶¹ Philip H. Gordon, “Bush’s Middle East Vision,” *Survival* 45, iss. 1 (Spring 2003): 159.

²⁶² See ‘Costs of Containment’ Section of ‘OTHER OPTIONS’ Chapter.

None of the options available for dealing with Saddam's Iraq would immediately resolve the Islamic radicalism and terrorism aimed at the United States and the West. Preventive war was the only option, however, that held the potential of removing Western forces from 'Islamic Lands' which was a main source of irritation for Osama bin Laden and others.²⁶³ With a stable Iraq, the potential would exist for the United States to scale back its forces in the Persian Gulf to pre-Gulf War levels.

Preventive war in Iraq also held the potential to prevent conflicts with other nations. The removal of Saddam would send a powerful message to other rogue nations and terrorist supporters. It could have both a "deterrent as well as transformational effect in the Middle East."²⁶⁴ Michael Doran believed, in January 2003, that removing Saddam "will do more than take care of immediate menaces. It will also sober up onlookers with oppositionist ambitions of their own."²⁶⁵ [This potential was realized when Libya decided to renounce its WMD program as a result of the American invasion of Iraq.²⁶⁶]

The removal of Saddam's regime would also return some credibility and respect for the United Nations. For over a decade Saddam had made a mockery of the institution and been a constant reminder of its limitations and failures. The world had come to view the United Nations as the organization that imposed debilitating sanctions on the Iraqi

²⁶³ Kenneth M. Pollack, "Next Stop Baghdad?" *Foreign Affairs* 81, no. 2 (March / April 2002): 43.

²⁶⁴ Joseph S. Nye Jr., "U.S. Power and Strategy After Iraq," *Foreign Affairs* 82, no. 4 (July / August 2004): 66.

²⁶⁵ Michael Scott Doran, "Palestine, Iraq, and American Strategy," *Foreign Affairs* 82, no. 1 (January / February 2003): 33.

²⁶⁶ Amitai Etzioni, *From Empire to Community: A New Approach to International Relations* (New York: Palgrave-MacMillan, 2004) 83.

population, yet could not enforce its own resolutions.²⁶⁷ Iraq was a festering thorn in the back side of the United Nations that it could not reach or pull out itself. The United States, by removing Saddam, would be removing the thorn and allowing the United Nations to finally put Saddam's Iraq behind it. It would hurt pulling it out, and the scar would always be there, but at least it would no longer be a festering sore standing out for everyone to take note of.

Finally, Preventive war could “spur counter proliferation gains and lead to greater regional security.”²⁶⁸ The most significant advantage the Preventive war strategy had over the other strategies is that it would not have to rely on trusting Saddam or believing he could be contained. Once Saddam and his regime were removed from Iraq the threat he posed to his neighbours and the international community would be gone. Any potential that he may pass off WMD to terrorist organizations or other rogue nations would also be eliminated.

Risks. A Preventive war option certainly entailed a measure of risk. Removing Saddam and his regime would leave a void in leadership in Iraq. By allowing Iraqis to determine their own destiny and select their leaders, America would be gambling on the outcome. While a pro-Western democracy was the preferred outcome, there was the potential for anarchy, secularism and instability. There was also no guarantee that any new government would be pro-American.

²⁶⁷ Michael Mandelbaum, *The Case for Goliath: How America Acts as the World's Government in the Twenty-First Century* (New York: PublicAffairs, 2005), 63.

²⁶⁸ Joseph Cirincione, “Can Preventive War Cure Proliferation,” *Foreign Policy* 137, (Jul / Aug 2003): 69.

As with any war there was also the risk of casualties. Given the strength of the coalition, and the state of Iraq's conventional forces, this risk was not particularly significant. A greater concern was the potential use by Iraq of WMD that everyone believed Saddam possessed. Saddam, in a desperate bid to save his regime, or in simple defiance, could have used WMD on coalition forces or on neighbouring countries causing significant harm.

There was also the risk of intensifying Arab and Muslim resentment. Although this potential certainly existed, the status quo did not offer a much better alternative. The requirement to maintain forces in the region was already inflaming the Muslim world and was partly the basis for al Qaeda's 9/11 attacks.²⁶⁹ While the short term outcome would likely result in greater resentment, the longer term outcome had the potential to be much more favorable.

²⁶⁹ United States National Commission on Terrorist Attacks, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States, Authorized Edition* (New York: W.W. Norton & Company, n.d.), 59.

CONCLUSION

In late 2002 / early 2003, the United States had to decide whether it would continue with the status quo or take advantage of a window of opportunity to finally break the present stalemate and remove Saddam from power. It would be a difficult decision. The easier option would have been to maintain the status quo strategies of containment and deterrence. This would not have upset many members of the international community, or required the commitment of forces and resources needed to effect regime change. The status quo, however, would come at a significant price, with little benefit for anyone involved except Saddam, his regime, and his regime's allies.²⁷⁰ In addition to the costs associated with these other options, stepping back from the precipice of war with Iraq would also send a strong signal to the world about the lack of American resolve.²⁷¹ Fouad Ajami summarized this potential danger in January 2003, by stating that "Any fallout of war is certain to be dwarfed by the terrible consequences of America's walking right up to the edge of war and then stepping back, letting the Iraqi dictator work out the terms of another reprieve."²⁷² A significant factor in tipping the balance towards regime change was the acknowledgement that, after twelve years,

²⁷⁰ Andrew Sullivan, "What I Got Wrong About the War," *Time* 167, no. 11 (Canadian Edition March 13, 2006): 52.

²⁷¹ See 'Deterrence' Section of 'OTHER OPTIONS' Chapter.

²⁷² Fouad Ajami, "Iraq and the Arab's Future," *Foreign Affairs* 82, no. 1 (January/February 2003): 18. Fouad Ajami is Majid Khadduri Professor of Middle Eastern Studies at the School of Advanced International Studies at John Hopkins University.

Saddam had established permanently that he can never be trusted and that no agreement with him has any hope of being observed.²⁷³

Although the other options held no promise of success, a move to preventive war would require a courageous ‘leap of faith’ on the part of the United States to break away from the status quo and malaise that had set in with respect to Iraq. Despite all of the political posturing surrounding the American invasion, preventive war, when combined with the humanitarian and Iraqi breaches of the Security Council resolution aspects, was a legitimate course of action. The United States led invasion of Iraq was conducted after 12 years of Iraqi violations of Security Council resolutions and an inability of the United Nations to achieve consensus on how to deal with Iraq’s human rights abuses and other threats to peace and security. In 2003, the world believed Saddam had WMD and he was openly supporting terrorist organizations. His political survival depended on defying the United Nations and the United States. Iraq was in ruins, and yet it still presented a threat to its neighbors in the Persian Gulf as well as to the United States. Iraq was a divisive element in the international forum and Saddam could no longer be trusted to adhere to agreements. The 2003 American decision to effect regime change, through preventive war was the correct choice.²⁷⁴ Although it had the potential of being the riskiest option, it was also the option that offered the greatest potential rewards of enhanced peace and security as well as relief from tyranny.²⁷⁵ It was, in fact, the only option that provided

²⁷³ Thomas M. Nichols, “Just War, Not Prevention,” *Ethics & International Affairs*, 17 no. 1 (2003), 26-27.

²⁷⁴ This paper does not discuss how the war itself was conducted or how efforts to win the peace have encountered problems. These are separate issues outside the scope of this Preventive war argument.

²⁷⁵ Keegan, John. *The Iraq War*. Toronto: Key Porter Books, 2004), 207. 80% of Iraqis welcomed the fall of Saddam Hussein and his regime.

any potential reward. This invasion did not affect the territorial integrity of Iraq in that its borders remained the same both prior to and after the war. Additionally, this invasion improved the political independence of the population by allowing the subsequent establishment of a democratically elected Iraqi government.

This preventive action in Iraq has had an impact on the international community. Preventive war doctrine is currently being considered, and even embraced, by some of the loudest critics of the American led invasion of Iraq. A United Nations High Level Panel Report of 2004, recommended that,

In the world of the twenty-first century, the international community does have to be concerned about nightmare scenarios combining terrorists, weapons of mass destruction, and irresponsible states and much more besides, which may conceivably justify the use of force, not just reactively but preventively and before a latent threat becomes imminent.²⁷⁶

This Panel's recommendations, although insisting that the United Nations Security Council is the ultimate decision maker on these issues, sound very similar to the 2002 United States National Security Strategy and the American justification for war in Iraq.²⁷⁷ Russia, France and many other nations are also leaning towards strategies of preventive action in what Thomas Nichols calls the 'New Age of Prevention.'²⁷⁸ This lends further credence to the assertion that the United States led invasion of Iraq and subsequent regime change was a legitimate, courageous and necessary application of preventive war.

²⁷⁶ Donald C.F. Daniel, Peter Dombrowski, Rodger A. Payne, "The Bush Doctrine is Dead; Long Live the Bush Doctrine?," *Orbis* 49, no.2 (Spring 2005); 208.

²⁷⁷ United States, The White House, "The National Security Strategy of the United States of America (September 2002)," <http://www.whitehouse.gov/nsc/nss.html>; Internet; accessed 9 September, 2005.

²⁷⁸ Thomas M. Nichols, "Anarchy and Order in the New Age of Prevention," *World Policy Journal* 22, no. 3 (Fall 2005): 11.

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