5-1-1992

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I. Introduction

The war of the future would be one in which man could extinguish millions of lives with one blow, demolish the great cities of the world, wipe out the cultural achievements of the past and destroy the very structure of civilization that has slowly and painfully built up through hundreds of generations. Such a war is not a possible policy for rational men.¹

The bombings at Hiroshima and Nagasaki created a nuclear cloud that has hovered over the citizens of all nations since World War II. The threat of a nuclear holocaust peaked in October 1967 during the Cuban Missile Crisis when a nuclear war between the United States (U.S.) and the former Soviet Union (hereinafter the Commonwealth of Independent States) seemed imminent. However, a combination of strategic planning and compromise by the superpowers prevented this disaster and laid the foundation for future arms control limitations. Although a continuing nemesis to the international community, the threat of nuclear destruction has lessened considerably since 1967 and has ceased to create front page headlines. However, within the past two years, during a time in which the United States and the Commonwealth of Independent States have made significant reductions in their nuclear arsenals, the threat of nuclear war once again made headline news. On August 2, 1990, under the leadership of President Saddam Hussein, Iraq invaded, occupied, and annexed neighboring Kuwait.² This action served not only to exacerbate regional instability, but also forced the United States and the rest of the world to recognize and confront the threat of nuclear proliferation in Iraq.

Over the past ten years, the Cold War which existed between the United States and the Commonwealth of Independent States gradually came to an end under the leadership of President Bush

¹. Kaysen, McNamara, & Rathjens, Nuclear Weapons After the Cold War, 1991 FOREIGN AFF. at 95 [hereinafter Kaysen]. As quoted by President Truman in a State of the Union address following the first hydrogen bomb test.
and President Reagan, as well as Soviet President Gorbachev. As evidence of this thaw, the world order has digressed from a bipolar structure between two great ideological powers towards collective security and an international rule of law.\(^3\)

Although the Commonwealth of Independent States may be developing five new strategic missile systems and will possess one of the largest and most formidable land forces in Europe,\(^4\) the country shows “no will to use its military power externally, and almost certainly lacks the political coherence to do so.”\(^5\) Experts such as Robert McNamara, former U.S. Secretary of Defense, believe that “[e]ven the failure of perestroika and a retreat from glasnost led by a new military-authoritarian regime would not reconstitute the powerful, ideologically driven opponent . . . the United States saw from 1945 through much of the last decade.”\(^6\) However, amidst the emerging detente between the superpowers, there exists a growing problem of nuclear proliferation in Third World nations that threatens to undermine the stability of the post Cold War era.

The technology necessary to construct nuclear weapons did not remain within the confines of the developed world.\(^7\) Instead it spread to developing nations whose political and economic regimes were generally less stable than the great powers, but who had the same inherent desire to possess a weapon of mass destruction for security purposes. Information of outdated nuclear weapons became readily available, and nuclear states aided Third World nations in acquiring atomic power. Subsequently, India became the first developing nation to “go nuclear,” and its acquisition spurred other nations to seek nuclear arsenals allegedly for defensive purposes.\(^8\) During roughly the same time period of India’s nuclearization, Israel instituted a nu-

5. Kaysen, supra note 1, at 95.
6. Id.
7. Barnaby, Weapons of Mass Destruction: A Growing Threat in the 1990’s, Conflict Studies 235, Oct/Nov. 1990, at 1, 3. The scientists, who designed the atomic bombs dropped on Japan during World War II, did not keep the manufacturing process a secret. For example, in a scientific journal, Amory B. Lovins, summarized the physics data necessary to construct a nuclear weapon. Today, most university libraries have on their shelves literature describing the bomb building process.
8. See generally E. LEFEVER, NUCLEAR ARMS IN THE THIRD WORLD (1979). India first demonstrated nuclear capabilities on May 18, 1974. The bomb explosion shocked most Western nations, including the United States, who was unaware of the significance of India’s advancements. Id. at 25, 35. Following the test, India shelved the nuclear program and directed research activities toward nuclear energy for civil purposes. Id. at 38. See generally L. SPECTOR, THE UNDECLARED BOMB (1988). However during the 1980s, as tensions with Pakistan mounted, India rejected a proposed test ban treaty and strengthened its nuclear arsenals by adding to its uranium stockpile. Id. at 96, 98.
clear weapons program with the help of France. Although continuing to deny her nuclear capabilities, experts widely acknowledge Israel as a nuclear force. The alleged acquisition prompted other Middle Eastern countries to initiate nuclear weapons programs to balance the decisive threat which an armed Israel presented. Countries such as Iraq made calculated moves to acquire the equipment and technology necessary to construct a nuclear stockpile.

Although Iraq informed the international community of her intent to acquire nuclear capabilities, the extent of Iraq's program did not begin to emerge until the advent of the Gulf crisis on August 2, 1990. The invasion of Kuwait and the subsequent confrontation between the allies and Iraq brought the issue of nuclear proliferation to the forefront of international politics once again. Throughout the crisis, the United Nations (UN) and the allied forces vocalized two primary concerns regarding the use of nuclear arsenals. World leaders feared not only that Iraq would construct a nuclear weapon within the year and subsequently utilize it against the coalition, but also that Israel would retaliate against a threatened Iraqi chemical attack with nuclear weapons.

This Comment evaluates the UN's successes and failures in eradicating these concerns. Section II provides an historical background of Iraq's quest for nuclear power. In Section III, the Comment identifies the resolutions adopted by the UN requiring Iraq to dismantle her nuclear weapons program. Section IV of this paper examines Saddam Hussein's compliance (or lack thereof) with the Security Council's Resolutions and analyzes the justifications asserted by Iraq's leader for non-compliance. The discoveries of the UN inspection teams are enumerated in Section V, while Section VI defines the methods available to the international community which will ensure the destruction of Iraq's nuclear capabilities. Section VII discusses the impact and implications which the Iraqi situation has had and will continue to have on the UN's role in halting nuclear proliferation. Although used primarily to facilitate the liberation of Kuwait, the Gulf confrontation represented an opportunity not only to destroy Saddam Hussein's nuclear bomb potential, but also provided the means to lay the foundation for a movement towards a Middle East peace.

9. See generally L. Spector, supra note 8. In 1956 France supplied Israel with a plutonium reactor which was erected in Dimona. The reactor operated at full capacity by 1962 along with a plutonium processing plant which existed underground unbeknownst to IAEA inspectors. Id. at 171. Some sources believe Israel had enough plutonium for a bomb by 1966 or 1967. Id. at 174. However, the United States still maintained in 1970 that Israel did not have a nuclear processing plant. Id.
10. This Week With David Brinkley (ABC television broadcast, April 1, 1990).
II. Iraq's Nuclear Heritage

As a signatory member of the Non-Proliferation Treaty (NPT), Iraq renounced nuclear weapons and agreed to accept a safeguards agreement with the International Atomic Energy Agency (IAEA) covering her nuclear facilities. Despite pledges to limit their pursuit of nuclear energy to those technologies utilized for peaceful and legitimate purposes, Iraq continued her quest for the nuclear bomb in response to the Israeli threat.

Prior to 1981, Iraq acquired three nuclear reactors and enough enriched uranium to make one nuclear bomb. However, on June 7, 1981, Israel nullified Iraq's advances by destroying the country's largest nuclear reactor. Israel justified the Osirak attack with an allegation that scientists intended to use the facility to produce nuclear weapons materials. Ignoring these claims, the United States State Department and the IAEA denounced the raid. Following the Osirak incident, Iraq's nuclear program - peaceful or otherwise - came to an abrupt halt.

Although forced to abandon the active pursuit of nuclear tech-

12. Fact Sheet: Nuclear Non-Proliferation Treaty, 2 Dispatch 12 (1991) [hereinafter Fact Sheet]. Since July 1, 1968, the Treaty on the Non-Proliferation of Nuclear Weapons has been "the cornerstone of international efforts to prevent the spread of nuclear weapons." Id. In addition, the treaty purports to foster peaceful nuclear cooperation under safeguards and encourages negotiations aimed at general disarmament. Today, over one hundred forty countries, including Iraq, have become parties to the NPT.

The treaty divides nations into two groups: countries detonating bombs prior to 1967 and non-nuclear states. Nuclear weapon states pledge not to assist any non-nuclear weapon state in acquiring arsenals. The NPT obligates nations which do not have nuclear weapons to refrain from manufacturing or acquiring the bombs. Article III provides for the International Atomic Energy Agency (IAEA) to apply international safeguards to existing nuclear facilities so as to detect and deter illegitimate activities. The Article also places safeguards on nuclear materials and equipment exported to non-nuclear states. In Article IV, the treaty not only recognizes the rights of member states to develop nuclear technology for peaceful purposes, but facilitates these advancements by providing for "the fullest possible exchanges of equipment, materials, and information." Id. Under the treaty, members hold a review conference every five years. In 1995 parties will meet to decide whether to extend the NPT beyond its initial twenty-five-year limit. Id.

13. Barnaby, Arms Control After the Gulf War, Conflict Studies 240, April 1991, at 1, 9. In 1968 the Commonwealth of Independent States provided Iraq with a reactor. Subsequently France, both in 1976 and again in 1980, sold reactors to the state. In addition, at the time of sale both countries supplied Iraq with highly enriched uranium to utilize as fuel in the reactors. Scientists could use this uranium in the manufacture of an atomic bomb.

14. See generally A. Cordesman, Weapons of Mass Destruction (1991). In addition to attacking the reactor, Israel attempted to eliminateIraq's nuclear program by assassinating Dr. Yahya el Maeshan, an Egyptian physicist employed by the Iraqi government, and through numerous bombings which destroyed French and Italian companies employed by Saddam Hussein. Id. at 97.


16. Id.

17. Albright & Hibbs, Iraq and the Bomb: Were They Even Close?, The Bull. of Atomic Scientists, Mar. 1991, at 16, 22 [hereinafter Albright]. Israel's attack closed off a potential plutonium route to the bomb and as a result of decreasing oil revenues, Iraq lacked the financial resources to immediately rebuild the program.
nology, Iraq never retracted her assertion to acquire nuclear weapons as compensation for Israel's arsenals.18 Ironically, after the attack, Iraq received both sympathy and technological support for a legitimate nuclear program.19 In 1987 Saddam Hussein "got serious" about acquiring the bomb by forming two organizations responsible for the procurement and development of his clandestine program. Al Quqaa State Establishment, located near Baghdad, developed non-nuclear components of nuclear weapons, while Nassr State Enterprise fostered the nuclear enrichment program.20 Simultaneous to the creation of these organizations, Saddam Hussein made calculated steps to import the equipment and technology vital to nuclear research which was not available within Iraq.

Regrettably, many of the industrialized nations must assume partial responsibility for the rapid advancements in Iraq's nuclear program. Iraq's covert attempts to import nuclear technology gained world wide publicity on April 4, 1990, when the United States Customs Service, in conjunction with the British government, arrested five individuals attempting to smuggle capacitors from CSI Technologies, a California corporation, to Iraq.21 In a related incident, customs officials later revealed that three scientists from the Al Quqaa State Establishment, while attending a detonation physics symposium in Portland, Oregon, inquired as to the availability of krytrons.22 Despite both the overt and covert activities undertaken by Iraq in an attempt to procure equipment and technology, experts predicted that Saddam Hussein would have to wait several years to acquire nuclear arsenals.

Pursuant to the attack at Osirak and Israel's allegations, Iraq voluntarily requested that the IAEA increase the frequency of the agency's visits to Iraq, presumably to add credence to Saddam Hussein's claims of a legitimate nuclear program.23 During the past several years, IAEA representatives went to Iraq every six months to ensure the peaceful use of the country's small amount of enriched uranium.24 In addition, inspections were made at various nuclear re-

18. Id. On French television President Hussein announced that "[H]e would see no problem in Western nations helping [him] to develop nuclear arms to help compensate for those owned by Israel." Id. at 16.
20. Id. at 17.
21. Albright, supra note 17, at 19, 20. Intelligence agencies linked the smugglers with the Al Quqaa State Establishment, the top secret facility responsible for developing missiles and explosives. The smuggled capacitors could have been used in the detonation devices of nuclear weapons.
22. Thomas, Saddam's Nuclear Secrets, Newsweek, Oct. 7, 1991, at 28, 34. An internal memo circulated at the Department of Energy described the conference as "The place you want to be...if you were a potential nuclear weapons proliferant." Id.
actors, each indicating that Iraqi nuclear activities remained within the legitimate framework established by the NPT. Accordingly, the IAEA inspectors labeled Saddam Hussein's cooperation with the Treaty as "exemplary." 28

Despite assurances about the peaceful nature of Iraq's research, the United States remained concerned about the growing threat of nuclear proliferation in Iraq. Therefore, the coalition welcomed the attempt which the Gulf conflict provided to rid the region of a nuclear nemesis. On January 16, 1991, President Bush announced that the liberation of Kuwait had begun. 26 Simultaneously he vowed "to knock out Saddam Hussein's nuclear bomb potential." 27 Later that month, the President confidently assured the American public that: "Our pinpoint attacks have put Saddam Hussein out of the nuclear bomb building business for a long time to come." 28

III. The United Nations Securance of Non-Proliferation

Although secure with the destruction of Iraq's nuclear infrastructure, the coalition realized that "Saddam Hussein is a pariah who will, if given the opportunity, reconsolidate his dictatorship and military machine [and] further brutalize the Iraqi populace, and threaten our allies in the region." 29 The Iraqi President's vow to "one day strike back at its enemies and that its capability to do so would be reconstructed" gave further evidence of the need for additional vigilance. 30 In the wake of these threats, the coalition recognized the necessity of a monitoring system not only to ensure that Iraq did not attempt to rebuild its nuclear program by salvaging remaining equipment and technology, but also to provide regional stability in the hopes of laying the foundation for a Middle East peace. This responsibility fell to the UN.

The UN continues to play an unprecedented role in the Gulf crisis. Each of its declarations and resolutions manifests an "encouraging lesson in what the organized international community can achieve when it acts in unison under the UN Charter." 31 One of the most eloquent tributes recognizing the significant role played by the UN during the crisis came from the Amir of Kuwait in a letter directed to the Secretary General on March 5, 1991:

26. War With Iraq, supra note 11, at 226.
27. Id.
Despite the overwhelming disaster that has befallen Kuwait, we now find some comfort in the fact that the international unity that came into being to repel the aggression has strengthened the position of the UN as an effective international organization.³³

A. The Cease Fire - Resolution 687

In order to balance its goal of securing non-proliferation in Iraq with the challenge of providing regional stability, the UN “established new practical security mechanisms that point the way for the international community to maintain the peace in the future.”³³ On April 3, 1991, the UN Security Council, in a vote of twelve to one, passed Resolution 687 which provides for a formal cease fire between Iraq and the allied coalition.³⁴ According to President Bush, the Resolution not only compensates Kuwait for Iraq’s aggression, but also includes provisions designed to ensure Iraq cannot rebuild its military strength to threaten anew the peace of the region. Weapons of mass destruction and the means to deliver them are to be destroyed, this is to be confirmed by on site inspection.³⁶

Sections of the Resolution deal with various issues such as: creating an international boundary and demilitarized zone between Iraq and Kuwait, providing for the return of all Kuwaiti property annexed by Iraq, securing Iraq’s financial responsibility for foreign debts, and demanding the country’s cooperation with the International Red Cross in returning Kuwaiti and other Third World nationals.³⁸

Two Sections of the Resolution deal specifically with weapons of mass destruction.³⁹ In addition to demanding a reaffirmation of

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33. Bolton, supra note 30, at 546.
37. Id. at 6. The text of paragraphs in Resolution 687 providing for the dismantling of Iraq’s nuclear weapons program are as follows:
11. Invites Iraq to reaffirm unconditionally its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968;
12. Decides that Iraq shall unconditionally agree not to acquire or develop nuclear weapons or nuclear-weapons usable-material or any subsystems or components or any research, development, support or manufacturing facilities related to the above; to submit to the Secretary-General and the Director-General of the International Atomic Energy Agency within fifteen days of the adoption of the present resolution a declaration of the locations, amounts, and types of all items specified above; to place all of its nuclear-weapons-usable materials under the exclusive control, for custody and removal, of the International Atomic Energy Agency, with the assistance and cooperation of the Special Commission as provided for in the plan of the Secretary-General discussed in paragraph 9(b) above; to accept, in accordance with the arrangements provided for in paragraph
Iraq's obligations to refrain from using chemical warfare and providing for the destruction or removal of all chemical and biological weapons, Resolution 687 implements a plan to render Iraq's nuclear weapons program inoperable. Initially the Security Council "invites" Iraq to unconditionally reaffirm its adherence to the NPT. In doing so, the UN hopes to reinforce Iraq's legal and moral obligations under this Treaty which requires signatories to refrain from developing any nuclear technology beyond the scope of peaceful activities. To ensure compliance, the UN also mandates that Iraq unconditionally agree to neither acquire nor develop nuclear weapons, weapons material, or any subsystems, components, or research pertaining to the construction of such weapons or materials. The terms of the cease-fire require a submission by Iraq to the Secretary General and the Director General of the IAEA adopting the Resolution and identifying the locations and amounts of these items. Subsequently, the weapons and materials will be placed in the possession of the IAEA, who will assume responsibility for their disposal. To guarantee Iraq's adherence to the disarmament requirements, Resolution 687 provides for the development of a Special Commission to carry out inspections of Iraq's nuclear capabilities.

The Commission, ultimately created and adopted under Resolution 699, passed on June 17, 1991, represents an unprecedented combined effort between the UN and the IAEA to render Iraq's nuclear infrastructure harmless. The task which the inspectors have under-

13 below, urgent on-site inspection and the destruction, removal or rendering harmless as appropriate of all items specified above; and to accept the plan discussed in paragraph 13 below for the future ongoing monitoring and verification of its compliance with these undertakings;
13. Requests the Director-General of the International Atomic Energy Agency, through the Secretary General, with the assistance and cooperation of the Special Commission as provided for in the plan of the Secretary-General in paragraph 9(b) above, to carry out immediate on-site inspections of Iraq's nuclear capabilities based on Iraq's declarations and the designation of any additional locations by the Special Commission; to develop a plan for submission to the Security Council within forty-five days calling for the destruction, removal, or rendering harmless as appropriate of all items listed in paragraph 12 above; to carry out the plan within forty five days following approval by the Security Council; and to develop a plan, taking into account the rights and obligations of Iraq under the treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968, for the future ongoing monitoring and verification of Iraq's compliance with paragraph 12 above; including an inventory of all nuclear material in Iraq subject to the Agency's verification and inspections of the International Atomic Energy Agency to confirm that the Agency's safeguards cover all relevant nuclear activities in Iraq, to be submitted to the Security Council for approval within one hundred and twenty days of the passage of the present resolution.

Id.
38. Id.
39. Id.
40. Id.
41. Id. at 5.
taken is a formidable one. As journalist Jim Wurst noted, the Commission “is attempting to do...what 90,000 tons of allied bombs could not do: disarm Iraq” under trying political circumstances, without adequate funding, or proper equipment. The inspection teams, composed of approximately twenty-one experts and a ten to fifteen member support staff, began on site inspections in May, 1991. Until this time, the Commission relied primarily on the Iraqi and United States governments for information regarding the state of Saddam Hussein’s nuclear weapons program. Under Resolution 687, the Special Commission carries out on site inspections of Iraq’s nuclear facilities based on the country’s formal declarations as required under the cease fire terms. However, as a result of Saddam Hussein’s history of deceit, the UN granted the Commission precedent setting authority to designate additional locations for inspection.

Resolution 687 may be “the most Draconian resolution ever passed by the Security Council against a Member State.” For the first time in history, the UN utilized “clear cut and internationally approved military and political action” to decisively block an existing effort to acquire nuclear capabilities. The Security Council cites several reasons to justify the adoption of stringent cease-fire terms. First, member states expressed concern over frequent reports alleging Iraq’s attempts to acquire materials for a nuclear weapons program. Incidents such as the smuggling operation discovered in 1990, serve to provide credence to these allegations. Secondly, the UN believes that Iraq’s disarmament will further the establishment of a nuclear weapons free zone in the Middle East. Finally, the Security Council, recognizing the enormous threat which the presence of nuclear weapons in Iraq poses to world peace and security, believes a weapons free Iraq will increase regional stability and provide the

44. Id. Despite the numerous assignments the Special Commission received, the UN only allocated $35 million for the teams. Moreover, the technology which the inspectors need to conduct thorough investigations “barely exists.” Id.
45. Id. at 10, 11.
46. Resolution 687, supra note 2, at 6.
47. Id.
49. Bundy, Nuclear Weapons and the Gulf, 1991 FOREIGN AFF. 83, 89. Israel’s unilateral attack on Osirak represents the only other overt attempt to decisively block a country’s acquisition of nuclear arms. However, in contrast to the current sanctions, the international community condemned Israel’s aggression and ignored its justification that Iraq was pursuing a nuclear weapons program.
50. Albright, supra note 17, at 19, 20.
51. Resolution 687, supra note 2, at 2.
foundation upon which to build a Middle East peace.\textsuperscript{52}

In drafting terms to halt the proliferation of nonconventional weapons, the Council had the difficult task of balancing these objectives with Iraq's legitimate need and right to self defense. To preserve Iraq's right to self defense as guaranteed by the UN Charter,\textsuperscript{53} the Council did not implement a permanent arms embargo against Iraq nor did Resolution 687 require the destruction of conventional arms.\textsuperscript{54} Following a meeting of the five permanent members of the Security Council on July 9, 1991, the representatives issued a statement acknowledging that:

The transfer of conventional weapons, conducted in a responsible manner, should contribute to the ability of states to meet their legitimate defence, security, and national sovereignty requirements and to participate effectively in collective measures requested by the United Nations for the purpose of maintaining or restoring international peace and security.\textsuperscript{55}

Although Resolution 687 signified a "growing political trend that weapons of mass destruction should be curtailed and eliminated," resulting in "a stronger and sharper control regime," the measure was not independently sufficient to produce immediate results.\textsuperscript{56} Therefore, in Resolution 699, the Security Council reaffirmed the Special Commission's authority to conduct all activities under Section C of Resolution 687 and held Iraq liable for the costs incurred in the implementation of the Resolutions.\textsuperscript{57} Ironically, the Gulf War provided the coalition not only with a means to eradicate the Iraqi nuclear threat, but also a way to defray the cost.

Due to Saddam Hussein's continuing non-compliance with the cease-fire terms, the Security Council unanimously enacted Resolu-

\textsuperscript{52} Id.
\textsuperscript{53} U.N. Charter art. 51.
\textsuperscript{54} Resolution 687, supra note 2, at 8.
\textsuperscript{55} Statement Issued After the Meeting of the Five on Arms Transfer and Non-Proliferation, 2 Dispatch 508 (1991).
\textsuperscript{56} Wurst, supra note 43, at 10. As quoted by Ambassador Rolf Ekeus of Sweden.
\textsuperscript{57} Resolution 699, supra note 42, at 1, 2. The applicable text of Resolution 699 is as follows:

2. Confirms that the Special Commission and the IAEA have the authority to conduct activities under section C of resolution 687 (1991), for the purpose of the destruction, removal or rendering harmless of the items specified in paragraphs 8 and 12 of that resolution, after the 45-day period following the approval of this plan until such activities have been completed...

4. Decides to encourage the maximum assistance, in cash and kind, from all Member States to ensure that activities under section C of resolution 687 (1991) are undertaken effectively and expeditiously; further decides, however, that the Government of Iraq shall be liable for the full costs of carrying out the tasks authorized by section C; and requests the Secretary-General to submit to the Council within 30 days for approval recommendations as to the most effective means by which Iraq's obligations in this respect may be fulfilled.

\textsuperscript{Id.}
tion 707 on August 15, 1991, reaffirming Iraq's obligations to the international community and demanding acquiescence. Specifically, the UN received letters on June 26, 1991, from the Executive Chairman of the Special Commission and the Director of the IAEA, reporting incomplete notifications of concealed activities and Iraq's unwillingness to comply with "undertakings relating to the privileges, immunities and facilities to be accorded to the Special Commission and the IAEA inspection teams." Acknowledging that the actions constituted a material breach of Iraq's international obligations, the Council condemned not only Saddam Hussein's breach of Resolution 687, but also his flagrant disregard for his country's obligations under the safeguards agreement with the IAEA — a violation of the NPT. Resolution 707 demanded full compliance with Section C of Resolution 687, including the full disclosure of all aspects of the nuclear weapons program; the granting to the Special Commission of immediate and unrestricted access to any and all designated areas; the freedom to utilize fixed wing and helicopter flights throughout Iraq; and finally, the cessation of all nuclear activities except those related to medical, agricultural, or industrial objectives.

IV. Iraq's Adherence to the United Nations Resolutions.

On April 6, 1991, Iraq reluctantly accepted the cease fire terms and accordingly promised a full disclosure of her nuclear program by July 25, 1991. Iraq made her first declaration on April 18, 1991, claiming that the country did not have any prohibited items because allied bombs destroyed the fissionable material. This seemingly conclusive statement was only the first of five successive declarations by Iraq in the months following the cease-fire. Each subsequent statement revealed a more comprehensive program than previously admitted. Iraq's formal compliance with the UN Resolutions was and may continue to be a sham. In reality, Saddam Hussein's "nuclear ambition, combined with his addiction to trickery, led him to a posture of pretended cooperation that was intended to conceal a continuing effort to get something, however crude and imperfect, that would make a bang."
A. Lack of Compliance

Thus far, Iraq has exemplified its lack of compliance with the Resolutions through major newsworthy events in addition to a general non-cooperative posture. The first incident occurred during the second inspection team’s visit to Iraq.66 The Commission directed its investigation towards undeclared nuclear sites pursuant to their power under Paragraph 13 of Resolution 687.66 Based on information received from United States Intelligence, the inspectors visited Abu Gharib military barracks on June 23, 1991, and Fallujah on June 28, 1991, hoping to find evidence of nuclear weapons research.67 Iraqi soldiers denied the team access to both facilities. A three day standoff ensued at Abu Gharib between the team and Iraq, during which time soldiers moved calutrons, utilized for uranium enrichment, away from the site.68 A more serious and threatening incident occurred on June 28, 1991 at Fallujah when soldiers not only denied the Commission access to the facilities, but also fired warning shots over the inspectors’ heads.69 Although useful in supporting claims of a clandestine nuclear program, the confrontations more importantly illustrate Iraq’s intense desire to preserve those nuclear weapon’s components spared destruction during allied bombings.

Based on a tip from an unnamed intelligence agency, a sixth inspection team was formed to search a building in central Baghdad. Believing the facility to be Iraq’s nuclear design center, the team arrived on September 23, 1991, hoping to find conclusive evidence of Iraq’s covert effort directed at the manufacture of nuclear arsenals. Although Iraqi soldiers moved a majority of the documents detailing the program before inspectors arrived, the team did recover four steel trunks containing numerous records.70

On September 24, 1991, Iraq arrested and detained the investigators for ninety-two hours in a parking lot.71 The incident which sparked international response, including a threat of military action from President Bush on behalf of the allied forces, illustrates the volatile situation existing in Iraq. Despite formal compliance with

66. Resolution 687, supra note 2, at 6.
68. Id.
69. Id. Soldiers fired the shots when members of the inspection team attempted to photograph a convoy of sixty to eighty trucks, visibly filled with materials and equipment, leaving the site.
71. Id.
the Resolutions, Saddam Hussein continues to search for ways to withhold information, materials, and equipment from the inspection teams, and as this situation indicates, he willingly risks a guaranteed military strike to preserve his nuclear program. At roughly the same time as the hostage situation, Iraq also questioned the right of the teams to fly their own helicopters and fixed wing planes during inspections as dictated by Resolution 707. Eventually, as a result of pressure applied by the Security Council, Iraq acquiesced to their use. Once again, however, Iraq resorted to threats of violence to ensure the protection of its weapons program.

These incidents are only three examples of the numerous deception techniques employed by the Iraqi government in an attempt to circumvent the UN Resolutions, thus preserving a nuclear weapons program. In addition, Iraqi soldiers bulldozed vital facilities; filed serial numbers from equipment used in the covert program; and with epoxy paint, defeated the sampling measures employed by the inspection teams. Despite her pledged compliance with the cease-fire terms, Iraq never intended to part with her nuclear advances, which were the products of billions of dollars in oil revenues. Saddam Hussein sought only to evade the Resolutions in a manner similar to the means used to deceive IAEA inspectors for the past decade.

B. Justifications for Non-compliance

Iraq's lack of compliance with the UN's Resolutions should not come as a shock to the international community. On April 6, 1991, the date upon which Iraq reluctantly accepted Resolution 687, Saddam Hussein expressed his intense dissatisfaction with the stringent requirements describing them as "unjust, iniquitous and vengeful measures." As information continued to surface providing concrete evidence of a clandestine program, Iraq's leader persevered in his onslaught against the Resolutions, searching for rationales to justify his non-compliance and alleging numerous reasons why the Commission should not destroy Iraq's weapons of mass destruction.

72. Resolution 707, supra note 58, at 644. The applicable text of Resolution 707 is as follows:

Demands that Iraq

(v) allow the Special Commission, the IAEA and their Inspection Teams to conduct both fixed wing and helicopter flights throughout Iraq for all relevant purposes including inspection, surveillance, aerial surveys, transportation and logistics without interference of any kind and upon such terms and conditions as may be determined by the Special Commission, and to make full use of their own aircraft and such airfields in Iraq as they may determine are most appropriate for the work of the Commission.

Id.


74. Resolution 687, supra note 2, at 6.
1. The Israeli Threat.—As the primary justification for salvaging the nuclear weapons program, Saddam Hussein cites the threat which a nuclear armed Israel poses not only to Iraq, but to the entire Middle East region. Despite Israel's formal position that "it is not a nuclear weapon state and will not be the first to introduce these weapons into the region," a majority of experts feel reasonably certain that Israel possesses nuclear arsenals. Most Arab nations, including Iraq, believe that Israel's nuclear capabilities provide a decisive advantage despite the fact that other countries in the region have many times Israel's population, higher birth rates, and greater oil wealth.

Neither the size of a military presence nor financial resources available for conventional weapons can match the deterrent power found in nuclear armed missiles. Adding credence to their argument, Iraq cites Israel's unprovoked unilateral attack on Osirak which "destroyed [their] peaceful nuclear reactor" as evidence that compliance with the NPT does not ensure protection from a nuclear armed power. Denied weapons of mass destruction, Iraq alleges it will become a "sitting duck" at the mercy of a hostile Arab neighbor.

2. Violations of National Sovereignty.—In addition to presenting the threat which a nuclear armed Israel poses as justification for non-compliance, Saddam Hussein insists that UN investigations have become never ending search and destroy missions which constitute an "unprecedented assault on the sovereignty and rights of his country." According to Iraq, the Resolutions represent a means for the international community to place Iraq under a trusteeship, in a manner similar to that invoked during the preindustrial era. Abdul Amir Al-Anbari, the Iraqi Ambassador to the UN, claims that the inspection teams "are occupying the country by remote control and . . . physical occupation" in an attempt to achieve domination. Iraq further alleges that the Commission deliberately exaggerates the extent of nuclear research, furthering a blackmail campaign "to create a justification for an aggression on Iraq and [to] maintain the economic blockade." Iraq even argues that the UN utilizes the cease-fire terms as a means to steal Iraq's nuclear program so as to deprive all Third World nations of advanced technologies to ensure

75. Bundy, supra note 49, at 92.
76. Kaysen, supra note 1, at 102.
77. Nightline: How Close Iraq Came, supra note 63.
78. Kemp, supra note 48, at 453.
79. Resolution 687, supra note 2, at 6.
81. How Close Iraq Came, supra note 63.
maintenance of the status quo.\textsuperscript{88}

In addition to citing the oppressive and invasive nature of the UN and its Resolutions, Iraq asserts that the United States in particular utilizes the Gulf Crisis as an excuse to gain control over the country and to "subject Iraq and the Iraqi people to US colonial tutelage."\textsuperscript{84} Saddam Hussein believes the inspection teams are disproportionately composed of American experts,\textsuperscript{85} thereby providing the United States with the means and the authority necessary to rebuild Iraq in a manner conducive to American political objectives. However, whether alleging domination by the international community as a whole or by the United States acting independently, Iraq firmly believes that the UN Resolutions and the inspection teams working under UN authority, constitute an unprecedented invasion of national sovereignty and deny Iraq her right to self determination. Iraqi leaders feel they should not be expected to comply with resolutions which ensure third party control of the state.

3. A Double Standard.—Iraqi officials charge the UN with enacting a double standard by requiring Iraq to dismantle her nuclear weapons program while providing other nations with greater latitude in pursuing nuclear research. Once again, Iraq cites Israel's advancements, arguing that the United States, who claims to be so vehemently opposed to nuclear proliferation, exported materials to Israel for use in their developing program.\textsuperscript{86} Moreover, the international community unquestionably accepts Israel's denials of nuclear power despite concrete evidence to the contrary. Even those powers which do acknowledge the probability of a nuclear armed Israel have not directed the country to become a full signatory member of the NPT and continue to apply limited safeguard requirements to Israel's program. In arguing a double standard, Iraq also alleges the inspection teams have unduly scrutinized and highlighted minimal quantities of undeclared nuclear materials in Iraq when other nations routinely produce small amounts of enriched plutonium and uranium for test operations without commanding invasive inspections by the IAEA.\textsuperscript{87} Finally, Iraq questions the willingness of other nations to accept the plan enacted by the UN. Officials debate the in-

\textsuperscript{83} Hibbs & MacLachlan, \textit{AYE Condemns Baghdad Again As Iraq Protests 'Double Standard'}, Nucleonics Week (September 26, 1991) (LEXIS, Nexis library, Current file) [hereinafter MacLachlan].


\textsuperscript{85} Wurst, \textit{supra} note 43, at 11.

\textsuperscript{86} MacLachlan, \textit{supra} note 83, at 12. Iraq also claims that the IAEA ignored a forty-one ton shipment from uranium for Luxembourg to Israel in 1985. However, evidence later revealed that Israel used the material for aircraft manufacturing rather than nuclear explosives.

\textsuperscript{87} Id. at 12.
ternational community's need to gain insight about Iraq's intentions for a revitalized nuclear program when "no government on earth announces its future plans in nuclear energy." 88

C. Arguments for Compliance

Although acknowledging that nuclear arsenals provide deterrent power for Israel, the UN does not believe the weapons pose the serious threat which Saddam Hussein asserts as justification for non-compliance. Admittedly, Israel is one of the primary players in the Middle East conflict, and the UN has openly sought to create a nuclear weapons free zone in the region for several years. 89 For the present time, however, and until the Arab nations reach a Middle East peace, the international community permits Israel to maintain her alleged nuclear arsenals on the basis of past prudence and a formal declaration promising not to introduce the weapons into regional conflicts. 90 Supporting this position, the UN can cite Israel's willingness to forego a retaliatory nuclear strike in response to alleged Iraqi chemical warfare and the actual attacks by SCUD missiles during the Gulf conflict. Israel's position during the war added credence to her promises and defused the threat that a nuclear armed Israel presented to the Middle East region at this time.

Members of the Special Commission openly admit to the intrusive nature of the inspection regime; the Resolutions provide the teams with unlimited access to any Iraqi facility allegedly connected with the covert nuclear program. In drafting the Resolutions, the Security Council attempted to balance Iraq's national sovereignty and right to self defense with the immediate threat a nuclear armed Iraq presented to regional and world security. The cease-fire terms provided Iraq with an opportunity to both declare its nuclear program and to submit an inventory of all equipment and materials utilized in research. Arguably, had Saddam Hussein complied with the terms, the inspection teams would not have been forced to resort to search

88. How Close Iraq Came, supra note 63.
89. Barnaby, supra note 7, at 10. Since 1974, the General Assembly regularly adopts a Resolution entitled: Nuclear Weapon-Free Zone in the Region of the Middle East. The Resolution

...urges all parties directly concerned to consider taking steps required for the implementation of the proposal to establish a nuclear weapon free zone in the region of the Middle East and, as a means of promoting the objective, invites them to adhere to the Nuclear Non-Proliferation Treaty (NPT); calls upon all countries of the region that have not done so, pending the establishment of the zone, to agree to place all of their nuclear activities under IAEA safeguards; to declare their support for establishing such a zone, and depositing these declarations with the Security Council; and not to develop, produce, test or otherwise acquire nuclear weapons or permit the stationing on their territories, or territories under their control, of nuclear weapons or nuclear explosive devices.

Id.
and destroy missions in an attempt to discover hidden programs. Iraq's leaders made a conscious decision not to carry out their formal acquiescence to the cease-fire terms and, therefore, must be subject to invasive inspections. In addition, the Resolutions did not require the destruction of Iraq's conventional weapons, thus, the UN did not deprive the State of its guaranteed right to self defense. By enacting measures that dismantled Iraq's weapons of mass destruction, the Security Council sought only to remove peace threatening weapons from a country and, more specifically, from a leader who has consistently evidenced irrational tendencies. Iraq's previous actions legitimize the aggressive posture adopted by the Security Council.

Many nations believe that even if the Resolutions deprive Iraq of national sovereignty and her right to self defense, the UN can justify these measures in light of the barbaric and deceptive practices utilized by the State before, during, and after the Gulf conflict. Prior to the discovery of concrete evidence proving the existence of a clandestine program, Iraq maintained she had not conducted any illegitimate nuclear research. Even after the inspection teams documented the existence of a nuclear program beyond the scope permitted by the NPT, Iraqi leaders insisted that scientists conducted research solely for peaceful purposes despite expert opinions that the program undeniably had military objectives. In the history of nuclear proliferation, no other nation has resorted to the extensive measures taken by Iraq to divert attention from its military objectives. Without invasive resolutions like 687, neither the Middle East nor the world is safe from an Iraqi nuclear threat. The magnitude of this danger, in light of Iraq's past actions, is one which the international community cannot tolerate and, therefore, must eliminate despite the imposition of admittedly inequitable standards and minor infringements of Iraq's rights.

V. Iraq's Nuclear Program

A. The United Nations Inspection Teams' Findings

Despite Saddam Hussein's formidable attempts to circumvent the Resolutions, the inspection teams, which have thus far visited Iraq, have gathered conclusive evidence of a clandestine nuclear pro-

91. N.Y. Times, Oct. 22, 1991, at A7, col. 1. Until the week of Oct. 20, 1991, Iraqi leaders continued to make statements that: their official nuclear program amounted to research into peaceful uses of atomic energy. After inspectors discovered more evidence of a clandestine program, officials modified their claims insisting the program "intended only to have them ready in case a political decision was taken to go forward with a bomb program."

Id.
gram which could have produced a bomb in the near future as well as additional weapons by 1995.\(^{92}\) Despite claims by President Bush and General Schwarzkopf that air attacks had "destroyed all [Iraq's] nuclear reactor facilities" and "neutralized . . . nuclear manufacturing capabilities," the allied forces failed to discover and destroy the nerve center of Saddam Hussein's program.\(^{93}\) One Pentagon official admitted:

"We can bomb all we want, but we'll never get all Iraq’s material and equipment by bombing. We can use bombing as a technique to punish Saddam or scare him. But when the dust settles, you still could have some material left plus the nuclear experts."\(^{94}\)

In late July 1991 the inspection teams initially discovered the existence of a far reaching nuclear program that the Iraqi government supported. Until this time, the Commission relied solely on national intelligence agencies to provide information regarding Iraq's program — the same agencies, who before the Gulf crisis, believed Saddam Hussein pursued only legitimate nuclear activities. When Jaffar Dhia Jaffar, the Deputy Chairman of Iraq’s Energy Commission and Deputy Minister of Industry and Minerals, interrupted an interrogation session to speak about equipment crucial to the production of enriched uranium, the inspectors suddenly realized the extent to which the international community underestimated Iraq's intentions to acquire nuclear technology.\(^{95}\)

The findings of the Special Commission indicate that the Iraqi program was comparable in ambition and scope to the Manhattan Project.\(^{96}\) Like the United States, Iraq had pursued several different paths of research. In contrast to the United States, however, the country explored them simultaneously. Experts describe Saddam's program as parallel, broad scoped, and very sophisticated.\(^{97}\)

In May 1991 the first inspection team encouragingly verified the existence of previously safeguarded materials.\(^{98}\) As the inspections continued, however, the teams discovered two grams of separated plutonium and over three times the amount of enriched uranium

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\(^{92}\) MacLachlan, supra note 83.


\(^{94}\) Hibbs, supra note 28, at 23.

\(^{95}\) Wash. Post, Oct. 13, 1991, at A1, col. 1. Later the United Nations (UN) confirmed that Dr. Jaffar had "the lead technical and administrative responsibility for the nuclear program as a whole . . . ." During the 1970s, he had become one of the two major scientific figures involved in Iraq's nuclear weapons program. Id.

\(^{96}\) L.A. Times, Oct. 9, 1991, at A1, col 2. The Manhattan Project consisted of the scientific research which produced the atomic bombs dropped on Japan during World War II.

\(^{97}\) How Close Iraq Came, supra note 63.

\(^{98}\) Nuclear Weapons in Iraq, supra note 65.
originally predicted. Later, from June 22 to July 3, 1991, the second inspection team utilized its power under Resolution 687 to examine undeclared sites. Photographs of soldiers removing materials, equipment, other evidence from the facilities substantiated claims of an undeclared uranium enrichment program. Subsequent inspections revealed two additional enrichment programs and the nerve centers of Saddam Hussein's research, at which he intended "to design and produce a nuclear device." One of the facilities, Al-Atheer, which intelligence agencies linked to the weapons program only one week before the end of the conflict, suffered only minor damage during allied bombings. Furat, the other location, assumed to be a general industrial center, but in reality, used for uranium enrichment through gas centrifuge, escaped the conflict unharmed.

Despite the accumulation of evidence suggesting the existence of a clandestine nuclear program, the inspectors did not obtain concrete proof of a deliberate campaign by Iraq to design and build nuclear weapons until the sixth inspection team went to Iraq from September 23 to September 28, 1991. During their visit, inspectors recovered 25,000 pages of documents, nineteen hours of videotape and 700 films detailing Iraq's program. In addition, the raid revealed the horrifying scope of Iraq's research and advances in Petrochemical Three, a code name for the nuclear program. The Commission also discovered evidence that Iraq's scientists attempted to produce a hydrogen bomb. Inspectors reached this conclusion based on documentation regarding Lithium 6, a fusion element primarily used in the manufacture of bombs.

One of the team's most important discoveries was a list of suppliers who exported equipment, materials, and technology to Iraq. Although the UN restricted disclosure of the specific corporations involved to those governments who requested the information, members of the inspection teams asserted that practically every Western

100. Id. at 17.
101. N.Y. Times, supra note 93, at A1, col. 3.
102. Id. Allied bombing missions succeeded in destroying only 15% of the Al-Atheer complex.
105. N.Y.Times, supra note 93.
107. L.A. Times, supra note 94, at A1, col. 2. This finding concerned inspectors because a hydrogen bomb has over one hundred times the power of a conventional atomic bomb. Documents found indicate Iraq intended to produce 220 pounds of Lithium per year. As of October 1991 inspectors had not discovered any Lithium during investigations. Id.
nation supplied Saddam Hussein with the means to further his nuclear research.\textsuperscript{108} For example, Germany, in particular, has several firms which supplied Saddam Hussein with the equipment necessary for uranium enrichment. The Bonn government notified the Special Commission that German companies began to ship 10,000 gas centrifuges to Iraq in 1989.\textsuperscript{109} Functional centrifuges would have produced amounts of enriched uranium sufficient to construct twenty to twenty-five weapons per year.\textsuperscript{110} In addition, inspectors discovered proof of Iraq conducting test blasts of nuclear weapon's components prior to the Gulf conflict, thereby producing further evidence of the significant advances made by Iraq in its pursuit of nuclear capabilities.\textsuperscript{111}

Iraq was a nuclear threat at the advent of the Gulf crisis in August 1990, and without the timely occurrence of the conflict, Saddam Hussein would have acquired a means to ensure international power and domination. There is a distinct possibility that Iraq would have possessed a nuclear bomb within twelve to eighteen months had the conflict not occurred.\textsuperscript{112} This is suggested by the fact that evidence removed during inspections revealed Iraq's mastery over a majority of the components necessary for a nuclear weapon. The country lacked only a sufficient amount of uranium to detonate a bomb.\textsuperscript{113} However, since researchers were conducting three parallel enrichment programs simultaneously, it was only a matter of time before enough uranium was accumulated to construct a weapon. Once Iraq conquered bomb building techniques, the country could build an arsenal composed of two to three additional explosives by the mid-1990s.\textsuperscript{114}

B. Factors Contributing to the Iraqi Program

1. Intelligence Failures.—In the immediate aftermath of the Commission's discoveries, government officials from many countries questioned how Iraq continued to acquire the technology necessary to manufacture a bomb without detection by the IAEA. The United States, in addition to other nations, openly admits to intelligence

\textsuperscript{108} L.A. Times, supra note 73, at A12, col. 3. David Kay, head of the sixth inspection team stated: "There is no region of the world that you will find that did not contribute to [the] program. It was a procurement network of breadth and sophistication." \textit{Id.}


\textsuperscript{110} \textit{Iraq May Have Produced}, supra note 109.

\textsuperscript{111} Chic. Trib., Oct. 26, 1991, at 3, zone C.

\textsuperscript{112} \textit{Nuclear Weapons In Iraq}, supra note 65.

\textsuperscript{113} \textit{Id.} David Kay testified: "Our conclusion is that the principal limiting factor at this time was the possession of enriched material; that all other aspects of weapons design they had pursued were relatively in hand." \textit{Id.}

\textsuperscript{114} \textit{U.N. Inspector}, supra note 104.
failures regarding Iraq both prior to and during the Gulf conflict. In general, Iraqi society is closed to foreigners, thus making infiltration by intelligence agencies nearly impossible. Although in the past defectors provided pertinent information, typically, the only data available to the outside world was that which the Iraqi government selectively leaked.

During the conflict, intelligence failures, in conjunction with bad weather which postponed investigatory flights, were responsible for miscalculations. In general, "The lack of reliable information inside Iraq's tightly controlled, highly compartmentalized nuclear program greatly hindered precise targeting by allied air commanders." Bombing missions neglected to target and destroy buildings crucial to the Iraqi program. Officials did not link facilities, such as Al-Atheer, with nuclear research until weeks before the war ended, at which time inclement weather prevented attacks. The intelligence failures which occurred during the Gulf conflict will have long standing implications for the effectiveness of the international community's control over nuclear proliferation. Today, governments vocalize concerns not only regarding technology which might remain hidden in Iraq, but also about the value of intelligence agencies in evaluating the defense systems of potential enemies.

2. Iraq's Deception.—Despite the international community's acknowledged weaknesses in determining the extent of Saddam Hussein's nuclear program, a majority of the undetected advances are attributable to Iraq's dedication to the attainment of nuclear weapons and the deceptive techniques employed to disguise the program. Since 1981 Iraq's government directed an estimated $10 billion of oil revenues towards research and employed approximately 10,000 scientists, thus making Iraq's technical and scientific investment in nuclear weapons the largest in the Middle East. To support the internal base, Iraq imported technology from numerous western nations, including the United States.

Currently, however, there is no conclusive evidence indicating direct participation by foreign governments in furthering Iraq's program. Rather, a majority of the advances resulted from the deceptive nature of Iraq's dealings with foreign corporations and the way in which Saddam Hussein disguised material at research facilities. In

116. N.Y. Times, supra note 93, at A1, col. 3.
117. Two Iraqi Nuclear Sites Survived Gulf War, supra note 103.
118. N.Y. Times, supra note 70, at A6, col. 1.
120. Nightline: How Close Iraq Came, supra note 63. For example, experts linked the electronic infrastructure which Iraq needed to run its covert program to the Hewlett Packard Company.
addition to using front companies to obtain parts, Iraq limited purchases to industrial goods, such as tools and equipment, from which it could manufacture the necessary components.\textsuperscript{121} Many of the goods purchased abroad had dual uses which included innocent applications.\textsuperscript{122} Thus, Iraq could obtain the material necessary for a bomb without arousing suspicion.

Once the technology reached Iraq and was applied to the nuclear weapons program, Saddam Hussein escaped detection by hiding facilities and utilizing loopholes in the NPT. Technically, Iraq did not violate the NPT until it separated three grams of plutonium at the Tuwaitha facility sometime after 1987.\textsuperscript{123} Earlier experiments conducted by scientists remained within the boundaries of the NPT because they utilized five fuels exempted from the safeguards.\textsuperscript{124} In addition, Iraq's safeguards agreement with the IAEA covered only those facilities which Iraq declared as processing plants for plutonium or uranium.\textsuperscript{125} Therefore, a substantial amount of covert nuclear research went undetected because it occurred in allegedly innocent facilities.

Iraq's obtainment of the technology necessary to build nuclear bombs cannot be attributed to a single factor. Although intelligence failures and exports by the Western nations facilitated advancements, they are not solely responsible for Iraq's developments. Neither tighter export controls nor infiltration by intelligence groups could have prevented Saddam Hussein from acquiring nuclear weapons. Using alternative means, he would have found components for the weapons and disguised them in a manner so as not to raise suspicion. It is this unflinching determination to possess nuclear weapons which members of the UN fear most.

VI. The United Nations Successes and Failures

A. The United Nations Resolutions

Although the Resolutions adopted by the UN in an attempt to dismantle Iraq's weapons of mass destruction are some of the most Draconian actions ever taken by the Security Council against a Member State, they may not be sufficient to eradicate the Iraqi threat. Members of the UN realistically fear that Saddam Hussein

\textsuperscript{121} U.N. Inspector, supra note 104; L.A. Times, supra note 96, at A6, col. 2. For example, documents found during inspections indicate that Iraq's hydrogen bomb program was "homegrown." \textit{Id.}

\textsuperscript{122} N.Y. Times, supra note 93, at A9, col. 4.

\textsuperscript{123} Albright and Hibbs, \textit{News the Front Page Missed}, The Bull. of Atomic Scientists, Oct. 1991, at 7 [hereinafter \textit{Front Page}]. The violation occurred because researchers utilized a safeguarded fuel fabrication laboratory to manufacture unsafeguarded fuel.

\textsuperscript{124} \textit{Id.}

\textsuperscript{125} \textit{Ten Years Ago}, supra note 19, at 5.
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will either circumvent the Resolutions, or refuse to comply with them and rebuild his nuclear empire in the same way he conducted a covert program for the past ten years. Resolution 687 has given the UN inspection teams precedent setting, blanket authority to visit undeclared facilities; however, this power is only as useful as the information that the UN has regarding Iraq’s program.

Thus far, by utilizing tips from defectors in conjunction with the limited resources of intelligence agencies, investigators have discovered what appear to be the primary components of Iraq’s research. Nonetheless, the UN should not underestimate the remains of the preexisting program or Saddam Hussein’s determination to utilize salvaged parts to rebuild his program. Members of the inspection teams, such as Dr. David Kay, believe that soldiers dispersed and hid much of the nuclear material for future use. Similarly, Rolf Ekeus, Chairman of the Special Commission, will not exclude the possibility that Iraq possesses a secret plutonium factory and perhaps a clandestine stock of enriched uranium as well.

Even if the enforcement of the Resolutions results in the discovery of all tangible aspects of Iraq’s program, the inspection teams cannot destroy the technology ingrained in the minds of the scientists: “You can remove the equipment, you can remove the fissile material, you can destroy the instruments, but you cannot take out the know how.” It was for this reason, the Iraqi government attempted to confiscate personnel records discovered by an inspection team. With this information the UN can, with limited effectiveness, ensure that Saddam Hussein does not use the expertise for rebuilding. However, even this insight into the masterminds behind Iraq’s nuclear advancements will not completely eradicate the threat of future nuclear proliferation in Iraq.

126. N.Y. Times, Feb. 5, 1992, at A1, col. 3. In early February 1992 Iraq explicitly rejected the UN’s proposed long term plan to monitor the country’s military industry and refused to provide a detailed report on the defense industry as required by Resolution 707. Iraq “does not recognize” that it has ‘any obligations under these Resolutions’ and “[will] not make any further declarations” on weapons production plans, effectively challenging the United Nations inspectors to go ahead and find whatever they are looking for.” Id.

127. U.N. Inspector, supra note 104. Although Dr. Kay admitted that allied bombing destroyed much of Baghdad’s program, he also stated: “They certainly have the technology and skill...the question is the material which they have dispersed and hidden and we have not completely found.” Id.

128. N.Y. Times, supra note 70, at A6, col. 1.

129. Wash. Post, supra note 95, at A1. As quoted by Maurizio Zifferero, head of the IAEA’s inspection operation.

B. Subsequent Enforcement Measures

Only months after the adoption of the cease-fire measures, rumors circulated that Saddam Hussein initiated a new program for nuclear research. Despite "the UN [doing] far more to uncover and disrupt Saddam's nuclear weapons program with its inspections than Desert Storm accomplished in six weeks of bombing," the Iraqi nuclear threat remained. Forced to reevaluate its posture, the Security Council searched for a means to ensure Iraqi compliance. Sadly, the UN's options are limited. For example, it would be futile and self defeating to invalidate Iraq's membership to the NPT and IAEA. Even though these agreements did not prevent the development of covert nuclear research, they help to maintain a link between Iraq and the rest of the world by providing authorized access to some facilities. Therefore, the IAEA can formally condemn Iraq for violating the NPT and its safeguards agreement with the agency, but cannot resort to more drastic measures. Realistically, a verbal condemnation will have little effect on a country who willingly confronts the allied superpowers. In light of these limitations, the UN must rely either on additional resolutions or resort once again to military action to ensure actual acquiescence with demands.

1. Additional UN Declarations.—In response to Iraq's harassment of and lack of cooperation with the inspection teams, the Security Council initiated additional declarations regarding Iraq's nuclear program. On October 11, 1991, the Security Council adopted Resolution 715, a comprehensive plan "to provide the international community with security over a long term that Iraq has not resumed its clandestine program of producing weapons of mass destruction." This extended monitoring plan once again forbids Iraq to ever possess nuclear weapons, in addition to requiring the submission of reports by Baghdad regarding scientific and industrial activities with military applications. In contrast to previous measures, Resolution 715 demands reports on equipment and other materials utilized for peaceful purposes as well as military ones. With this requirement, the UN hopes to avoid any loopholes which Saddam Hussein could use to rebuild his program without violating the Reso-
lutions. Although more intrusive than the previous Resolutions, the UN can justify 715 on the basis of Iraq's and specifically, Saddam Hussein's previous actions, both during and after the Gulf conflict.

On October 24, 1991, the UN instituted another dramatic step toward ensuring that Saddam Hussein never acquires weapons of mass destruction.\textsuperscript{137} The UN endorsed a plan presented by Rolf Ekeus, Chairman of the Special Commission, that requires the destruction of not only the technology used to produce nuclear bombs, but also the facilities and the equipment utilized to manufacture bomb components.\textsuperscript{138} Even with the apparent all encompassing nature of these guidelines, experts express their concern that agencies will make exceptions for dual use materials if Iraq convinces the UN of legitimate uses and agrees to place materials under safeguards.\textsuperscript{139} As a precaution, the Resolution requires experts to presume an illegal purpose of any facilities and equipment with possible military objectives.\textsuperscript{140}

2. Military Action.—With the enactment of the subsequent Resolution, the UN eliminated a majority of the loopholes available to Saddam Hussein for rebuilding his nuclear program. Any others which exist will most likely be discovered only if Iraq attempts to manufacture another bomb. A realistic possibility exists that the Security Council's actions will not deter Iraq's determination to acquire nuclear weapons. The Iraqi threat may require additional military pressure by the allied forces. President Bush already indicated his willingness to reactivate armed forces when Iraqi soldiers held the sixth inspection team hostage. In this situation, the threat of military action was sufficient to obtain the release of the team without actual confrontation. However, one must balance this success with the failure of a military threat to achieve an Iraqi withdrawal from Kuwait. The threat of a military strike alone may not always achieve desired objectives. Therefore, the UN, in conjunction with the allies, must stand firm not only in their verbal commitment to prevent nuclear proliferation, but must also exemplify a willingness to engage in military action if necessary to ensure compliance.

VII. Implications For the Future

Throughout the Gulf crisis, the UN and, in particular, the Security Council played a precedent setting role by confronting the threat which Iraq posed to world security. In recent years, a growing

\textsuperscript{137} N.Y. Times, \textit{supra} note 80, at A7, col. 1.
\textsuperscript{138} \textit{Id.}
\textsuperscript{139} \textit{Id.}
\textsuperscript{140} \textit{Id.}
skepticism developed as countries questioned not only the power of the UN as a peacekeeping agency, but also “the role of the Security Council as a force distinct from the interacting behavior of its member states. . . .” However, the advent of Saddam Hussein's invasion of Kuwait and the subsequent discovery of an advanced clandestine nuclear program in Iraq dramatically expanded the role of the UN in shaping international relations.

Reflecting on the firm posture adopted by the Security Council to ensure Iraq's compliance with the Resolutions, leaders of many nations recognize “there is a demonstrated cause for hope in the cooperative performance at the United Nations, and it is not wrong to think that we may get help from that body on the wider and inescapably multinational question of nuclear danger.” As inspectors dismantle the remains of Iraq's weapons program, the UN Charter and the instruments available under it continue to gain credibility and establish a framework for an evolving rule of law.

Amidst this optimism, however, there exists a practical reality that the UN may not have the resources to play as forceful a role in other international incidents as it has in post-war Iraq. Today, the UN acts in the midst of deep financial difficulties. As a result of unpaid dues, Member States owe the international organization more than $800 million. Without sufficient funds, the UN will be forced to cut several programs which could affect controls on nuclear proliferation. Moreover, the Gulf conflict and the position chosen by the Security Council in dealing with Saddam Hussein's barbaric and deceptive practices is best described as precedent setting. Only the willingness of the UN to adopt an unorthodox approach to the Iraqi situation permitted the agency to “fulfill its role of acting to restore international peace and security and to resolve conflict. . . .”

For the first time in history, the UN openly sought the assistance of national intelligence agencies to provide the Special Commission with information about Iraq and their nuclear weapons program. In a similar precedent setting manner, the Special Commission, organized under Resolutions 687 and 699, joined forces with the IAEA so as to gain access to the agency's expertise and equipment, thus facilitating the search for a clandestine program. Until the crisis, the UN viewed the IAEA as a foreign state with which one negotiated rather than an instrument to link members with each other's national security. The UN's request that the

142. Id.
143. Kaysen, supra note 1, at 101.
145. Bolton, supra note 30, at 545.
146. Iraq's Nuclear Capability: Capitol Hill Hearing of the Senate Foreign Relations
agency conduct on site inspections, remove and destroy all items relating to the nuclear weapons program, and prepare a long term plan for the continual monitoring of Iraq's nuclear intentions expanded the ability and power of the IAEA to limit nuclear proliferation. In contrast to the restricted inspections conducted under the NPT, the Resolutions gave the Special Commission blanket authority to search both declared and undeclared facilities in conjunction with the ability to use aircraft for thorough investigations. In addition, although given an agenda to follow, the Special Commission did not receive any time limitations, and, therefore, could remain in Iraq until satisfied with the discoveries made. Without these liberal and admittedly intrusive measures, inspection teams could not have discovered Saddam Hussein's well disguised program. Therefore, in analyzing the implications which the UN's role in Iraq will have on the future of nuclear proliferation, one must consider the context of the Iraqi situation and the unprecedented steps which the UN willingly took to defeat a nation and a leader who overtly and covertly undermined the international system.

To prevent further nuclear proliferation in Iraq as well as in other nations, the UN must continue to play an active and forceful role in international politics. Although "with the political mandate the UN has increasing received for peacekeeping, . . the doors may finally be opening for practical applications of 'collective security' as envisioned by the framers of the UN Charter nearly fifty years ago," the agency, without reservation, must continue to invoke measures against threatening nations similar to the Draconian Resolutions enacted against Iraq. In addition, once the Special Commission completes the internal examination of Iraq's facilities, the UN should not abandon the relationships established with national intelligence agencies or the IAEA. Instead, she should nurture and develop a strong posture of collective security. Only a cooperative alliance between these separate entities can expose covert nuclear research. Furthermore, to ensure the efficient and effective use of the affiliation, the international community must extend additional power and authority to the IAEA so as to transform the agency from an information gathering system into a group, which in conjunction with the UN and national intelligence agencies, will safeguard and control the spread of nuclear arsenals.

Similarly, the signatory members of the NPT need to reaffirm the treaty during the review session in 1995. The NPT, although failing to prevent the spread of nuclear weapons to Iraq, still repre-


147. Wurst, supra note 43, at 12.
sents an insurance policy against nuclear proliferation - "A world without [the] NPT would lead to diminished political constraints on the spread of nuclear explosives, increase regional suspicion and tension and jeopardize international peace and stability." Only through the continuing use of collective security will the international community eradicate the formidable threat of nuclear proliferation.

VIII. Conclusion

As the one year anniversary of the Gulf War passes, the UN can optimistically reflect on its successes in dismantling a majority of the Iraqi nuclear threat. The Gulf crisis illustrates "that possession of nuclear weapons can be put off limits for a particular dangerous government, at least when the grounds for such action is clear and the power to act sufficient." However, these advancements are only short term. A realistic possibility exists based on historic precedent that Iraq will circumvent the Resolutions and initiate a new program. Although inspection teams appear to have destroyed the infrastructure utilized in the production of fissile material, Iraq, in the absence of constant monitoring, can rebuild the physical plants in "a few, rather than many, years." In addition, revelations about Iraq's clandestine research may spur other Third World nations to acquire nuclear weapons because they might perceive their necessity as a deterrent to nuclear armed countries. The recent disintegration of the former Soviet Union into three independent Baltic nations and the Commonwealth of Independent States exacerbates this concern. Intelligence agencies, such as the CIA, fear a "Soviet nuclear 'brain drain.'" In other words, as a result of the poor economic conditions in the former Soviet Union, scientists with the skills to design nuclear weapons may emigrate to developing nations such as Iraq, or may remain in their homeland but provide intelligence to other countries in return for cash. In either situation, nations with aspirations of nuclear arsenals could benefit from the Soviet Union's demise.

Long term stability in the Middle East requires the creation of a nuclear weapons free zone - "any viable and effective solution to issues related to the proliferation of nuclear arms must be based on the equal banning of all weapons and systems of mass destruc-

148. Fact Sheet, supra note 12, at 12.
149. Bundy, supra note 49, at 94.
151. Id.
152. Id.
The Iraqi situation represents only a single example of the growing threat of a nuclear confrontation in the post Cold War era. As President Bush stated, "The proliferation problem [can] worsen because of the greater availability of materials and technologies, difficult economic times in potential supplier countries and regional animosities." Although the emerging detente between the superpowers "freed the United Nations from the political paralysis that has hindered it for most of its 46 years of existency," effective control over the spread of nuclear weapons requires first a "realization by individual governments that it is foolish to get involved in a nuclear arms race." 

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153. Kemp, supra note 48, at 453.
154. CIA Chief Fears, supra note 151.