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After Non-Detection, What?
**What Iraq's Unfound WMD Mean
for the Future of Non-Proliferation**

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ACRONYMS

| | |
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| CTBT | Comprehensive Nuclear Test Ban Treaty |
| CWC | Chemical Weapons Convention |
| BWTC | Biological and Toxin Weapons Convention |
| NATO | North Atlantic Treaty Organization |
| NPT | Nuclear Non-proliferation Treaty |
| UNSCOM | United Nations Monitoring, Verification and Inspection Commission |
| UNMOVIC | United Nations Special Commission |
| WMD | Weapons of Mass Destruction |

INTRODUCTION*

For over a decade, Iraq was widely considered to be Exhibit A in the case against the multilateral global non-proliferation regime,¹ a blatant example of how even highly intrusive inspections could not prevent significant cheating by determined proliferators. Yet seven months after the collapse of Saddam Hussein's dictatorship, the stunning failure to find significant evidence of his weapons of mass destruction (WMD) programme appears to have called much of this argument into question. Nonetheless, while the mystery of Iraq's unfound WMD is profoundly disturbing to the basic assumptions of arms control and non-proliferation skeptics, those who might conclude that classic non-proliferation mechanisms have thus proven their adequacy should not take too much comfort from the Iraqi case, for the basic problems with the system remain as serious as ever. At the same time, the Iraq experience points the way to a potential renewal of international cooperation against WMD proliferation.

The collective multilateral non-proliferation regime has been badly cracked and broken for over a decade—the result of strains due to the end of the Cold War, whose international diplomatic instruments are increasingly ill-adapted to the emerging new global power configuration, but also due to neglect, inattention and the deliberate defiance of norms. With the Indian and Pakistani nuclear tests of 1998, developments in North Korea and now, the highly suspicious Iranian nuclear activities, the non-proliferation regime remains in its frame like a broken safety glass window that needs only one final blow to fall into a thousand tiny shards. The pieces still hold together, but for how long?

Iraq, on the other hand, was to have been the one piece of good news in this dismal account. The smashing of Saddam Hussein's dictatorship and with it his ambitions to use weapons of mass destruction to make Iraq the preeminent power in the Middle East was not only to have rolled back one determined proliferator, but also to have sent the strongest of signals to the other "rogues" that clandestine and illegal activity would henceforth not be

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tolerated. An important part of this message was the new American determination not to allow the formal mechanisms of the multilateral non-proliferation regime to be used by proliferators to avoid any serious consequences for their actions.

Saddam Hussein's Iraq had for over a decade been the most egregious case, a state that was flagrantly in defiance of all international non-proliferation norms and the United Nations Security Council. Iraq stood as both the high-water mark of the multilateral non-proliferation regime's success and the emblem of its failure. High-water mark, because during its seven years of activity the United Nations Special Commission (UNSCOM)—whose powers far exceeded those of any international treaty-based compliance mechanisms or verification arrangements—achieved what is by any standards substantive disarmament on a major scale. In the chemical weapons area alone it destroyed over 38,000 filled and unfilled chemical munitions, 690 tons of chemical warfare agents, more than 3,000 tons of precursor chemicals and over 400 pieces of production equipment.² Yet UNSCOM's undoubted successes were equally and fatally undermined by Saddam's dogged non-cooperation and Security Council's inability to maintain unity of purpose. Well before 1998 it was clear that without full Iraqi cooperation, UNSCOM could never be sure it had uncovered the full extent of Iraq's prohibited weapons programme. This experience convinced many that if real disarmament could not be fully achieved even under the exceptional circumstances afforded by Iraq's military defeat and the Gulf War cease-fire resolution 687, conventional voluntary treaty-based non-proliferation measures could hardly be relied upon to deter proliferation. No one with experience of that time and knowledge of the Iraqi WMD programme seriously doubted that after UNSCOM inspectors left in 1998 Saddam would rebuild his weapons capabilities, likely in ways designed to be much harder to detect.³

Yet as of this writing, four months after the fall of Baghdad, not only have actual weapons not been found, but no conclusive evidence to show that Saddam's illicit weapons programme continued after the mid-1990s has been uncovered. Could it be that a combination of containment, sanctions, and two rounds of United Nations inspections, actually led Iraq to undertake pre-emptive disarmament? In other words, have the United States and the United Kingdom, having brushed aside the United Nations inspectorate and multilateral procedures, stumbled upon the utterly unexpected discovery that these mechanisms actually worked? Or, to the

contrary, is it the case that the weapons were so well hidden that they were under any circumstances unlikely to have been found in the few months since the collapse of Saddam's regime by coalition forces, much less by United Nations inspectors? What conclusions can be drawn from this completely extraordinary turn of events?

The situation is simply astonishing. It seems inconceivable that a regime that went to such extraordinary lengths to conceal its WMD programme throughout the UNSCOM years and then to resist the re-imposition of inspections could have actually destroyed those weapons of its own volition. One increasingly plausible explanation is that Iraq chose to abandon its active programme and large stocks of weapons and weapons agents in favor of a highly stealthy programme to keep capabilities in being while waiting out the international community. The best physical evidence to date of an ongoing weapons programme—the discovery of truck trailers corresponding to Secretary of State Colin Powell's description in his February 2003 United Nations speech of mobile biological weapons production facilities and research laboratories—while suggestive, is inconclusive at best.⁴ No traces of biological agents, growth media or documentation have been discovered to prove their intended purpose. If indeed these trailers were part of a stealthy biological weapons programme, their scale and capabilities argue more for a research programme than for production of actual weaponizable biological agents.

More recently, the former head of Iraq's pre-1991 uranium enrichment programme, Dr Mahdi Shukur Ubaydi, produced old blueprints and parts for a gas centrifuge that he had hidden in his garden on Saddam's orders, claiming that these would have been used to reconstitute the nuclear programme once sanctions and inspections were terminated.⁵ Needless to say, a single buried centrifuge is by itself not sufficient for an ongoing uranium enrichment programme. These discoveries are, at the least, completely consistent with the theory that by the time the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) was allowed to begin inspections there were no significant stocks of WMD in Iraq.

Indeed, given these discoveries, the complete lack of any evidence of deployed weapons in Iraqi ammunition depots,⁶ and the lack of any evidence at sites identified by western intelligence as critical WMD infrastructure, it may even be plausible to suppose that the reason why

coalition forces have not thus far discovered concrete evidence of actual Iraqi weapons of mass destruction is because Iraq destroyed much of its extensive stocks of chemical and biological weapons as early as 1991, as claimed by the defector Gen. Hussein Kamel, a former head of Iraqi clandestine weapons programmes. Kamel also indicated that the Saddam regime held on to critical data, blueprints, molds, and perhaps seed stocks of biological agents with the intention of restarting the programmes after sanctions had been lifted.⁷ Any more recent WMD activity may well have been buried and put into hibernation in order to weather the latest round of United Nations inspections. US officials at one point appeared to accept the possibility that Iraq largely destroyed its weapons stocks before the war,⁸ although pressure to justify pre-war statements on the imminent danger from Iraqi weapons of mass destruction has led to a renewed emphasis on finding concrete evidence.

There is still the question of why Saddam would choose to put his country through the pain of sanctions without having anything significant to hide. One hypothesis is that after losing the bulk of his weapons to UNSCOM and poor storage capabilities Saddam began engaging in a monstrous hoax to maintain his power and prestige on the cheap through deliberate ambiguity.⁹ Most states that have nothing to hide embrace compliance mechanisms as a means to instill confidence in their neighbors. The classic view of the rogue state was that to the extent it complied at all with verification and compliance mechanisms, this was intended to “use” the system to demonstrate formal compliance while continuing with illicit weapons programmes. The idea that a state would construct a pattern of deliberate ambiguity as to the possession of WMD and suffer all the potential consequences without actually seeking the presumed benefits of the weapons themselves is a novel one. Yet Iraq, and perhaps North Korea, may have engaged in this kind of ambiguity to some degree, exaggerating if not entirely inventing the extent of their programmes.

If it turns out that Iraq was engaged in this kind of bluff, it raises interesting questions for non-proliferation. Can such ambiguity be tolerated on an innocent-until-proven-guilty basis? In other words, can the international community continue to operate on the basis that states party to arms control and non-proliferation agreements are in good standing unless they are conclusively detected to be cheating? Perhaps the standard should instead require states—be they bluffers or dissemblers—that exhibit substantial ambiguities in their behavior to prove a negative, or at the least,

to be held to higher standards, as was Iraq. In effect, this is what appears to be happening on an ad hoc basis in the cases of states such as Iran and Korea. It is clear that marshalling this kind of pressure is rendered vastly less difficult when there are existing international obligations under which the suspect state can be held to account. Although not the only factor, the half-hearted and short-lived attempts to impose sanctions on India and Pakistan after their 1998 nuclear tests were likely made much more difficult by the fact that neither state had any obligations under the NPT. By contrast, the considerable international diplomatic pressure on Iran in the wake of the discovery of its extensive and unreported uranium enrichment facilities, construction of a heavy water plant and other suspicious nuclear research, leading to Iran's recent decision to adopt the International Atomic Energy Agency's (IAEA) strengthened safeguards protocol would not have been possible had Iran not been an NPT state party.

If Iraq actually had no significant stocks of WMD, or only in as yet undetected small quantities it is clear the Saddam regime intended to possess them on a large scale—or to make the rest of the world believe in their existence. Inherently subjective judgments of intent are, however, a very insubstantial basis for a rule-based non-proliferation regime. Inability or unwillingness to dispel reasonable doubt is another matter, however. Countries, the most notable example of which is South Africa, which wish to disarm credibly can go a long way to create confidence that they have in fact dismantled their weapons programmes. South Africa provided extensive documentary and on-site evidence of their claims. If Iraq had in fact discontinued its weapons programmes, why did it not do likewise and avoid the pain of sanctions, not to mention repeated bombings over the years culminating in a disastrous war? Presumably, Saddam thought it advantageous to have the world overestimate his capabilities and feared the political consequences of admitting defeat by bowing to his enemies' will. He may also have calculated that a virtual, bluffed deterrent via carefully staged disinformation might stave off invasion by the US and its allies. This could explain why coalition forces were prepared for chemical weapons attack and were then totally surprised to find no chemical munitions at forward ammunition depots.

ROLE OF INTELLIGENCE

One result of the Iraqi episode is the significant discrediting of the role of intelligence. Having—unofficially—treated UNMOVIC and Hans Blix as naïve and bumbling at best, and wilfully pro-Saddam at worst for their inability to uncover evidence of wrongdoing that the US administration proclaimed was abundantly available, the American inability to better the UN inspectors—in the absence, moreover, of Iraqi minders and with free run of the country—leads to some troubling conclusions. One, widely believed, is that US declarations that it possessed extensive evidence of Iraqi weapons programmes were little more than cynical manipulation designed to provoke a war decided upon well in advance for largely unrelated geo-political and/or economic reasons. If the US had this information, why did it not share it with the inspectors? To the extent any was shared, why were there no concrete results? Reports that US and British intelligence were urged by political leadership to produce the required assessments regardless of evidence and the damning revelations regarding the infamous UK dossier subsequently discovered to have been based on a plagiarized graduate student thesis, and the forged evidence of Iraqi attempts to acquire uranium ore from Niger contributed heavily to this impression.¹⁰

It is nevertheless apparent that the US administration genuinely believed WMD would be found in Iraq. A truly cynical scheme would have “found” convincing evidence long before this quite embarrassing lapse of time. The bewilderment is genuine—but so is the damage done to the credibility of American assertions of superior information. Secretary Powell’s intelligence-based claims to the Security Council have yet to be borne out, not to speak of the embarrassment of the claims that subsequently turned out to be based on the UK dossier or the Niger uranium documents. The discoveries of the mobile labs and the centrifuge blueprints and parts, while suggestive, are far from conclusive or sufficient to restore lost credibility. Moreover, while chief US WMD-hunter David Kay’s interim progress report to the Congress in October 2003 provided additional evidence that Saddam was committed to preparing for a restoration of his WMD programme at a later date, it provided no concrete evidence of actual stocks of weapons.¹¹

The standard critique of arms control measures based on inspections made to the rest of the world by those privy to intelligence has been that

inspections cannot and do not work in the face of a state that is determined to cheat. Deterrence and shaming are insufficient to deter “rogue” states, states defined as those that intelligence tells us are cheating. Due to the nature of intelligence, however, proof is rarely absolute and almost never provided to third parties. As a result, future US assertions that formal non-proliferation is not working based on intelligence that cannot or will not be shared will be seen in a more skeptical light, and thus could tend to reinforce the general belief that treaty-based inspection regimes are adequate. Even in cases where the underlying concerns are widely shared among nations, it is likely that consensus about crucial assessments as to the status of a proliferant state's weapons programme will be much more difficult to achieve. Thus, for example, even though no one today doubts that North Korea has an active nuclear weapons programme, American briefings to concerned East Asian governments that North Korea may be developing the capability to miniaturize nuclear warheads have been met with considerable skepticism.¹²

Intelligence is thus doubly discredited—by allegations of deliberate manipulation by US and UK political leaders and, even in the absence of these, by the inability of the coalition to find any credible evidence of Iraq's clandestine weapons programme. The situation stands on its head the usual relationship of arms control/non-proliferation regimes to national intelligence capabilities. The typical assumption—and not only that of arms control skeptics—has been that the limitations of multilateral inspection regimes meant that they would never be able to uncover the full extent of a suspected cheater's activities compared with the information available to national, particularly American, intelligence services. Moreover, skeptics have long held, insufficiently rigorous compliance mechanisms tend to generate false negatives, effectively whitewashing rogue states and leading to false confidence in compliance. It would seem that the hitherto underestimated danger, given the current state of evidence in Iraq, is that intelligence estimates will produce false positives.

To be sure, UNMOVIC Chairman Hans Blix, along with many others, was hardly persuaded that Iraq had nothing to hide, as his reports to the Security Council make clear.¹³ Nevertheless, he was considered insufficiently supportive of the need for a military solution to the Iraq problem. A Bush administration that was apparently convinced in advance that no United Nations-mandated inspectorate could detect and dismantle Saddam's weapons programmes—particularly one headed by the former

chief of the same IAEA that had failed to detect Iraq's nuclear programme before 1991—was never likely to have settled for the equivocal reporting produced by UNMOVIC. Blix evidently chafed at the unwillingness of the US to share intelligence as to critical Iraqi weapons sites that could have made his job easier, followed by a smear campaign to make his efforts appear biased in favor of Saddam Hussein.¹⁴ That the US might have deliberately undermined the efforts of the inspection regime it had helped to put into place by withholding intelligence from UNMOVIC to ensure it did not have too much success is certainly disturbing. But that those same intelligence assessments of Iraq's WMD programme and intentions should then turn out to be almost completely wrong is in a sense more troubling than the hypothesis that US officials ordered up intelligence reports tailored to fit their preconceived conclusions, for it calls into question basic and widely held assumptions about non-proliferation—assumptions held not only by skeptics but also by true believers in the utility of multilateral non-proliferation regimes.

Regardless, however, of whether we fully accept the explanation that the coalition's inability to find concrete evidence is due to the fact that there is none to be found—which appears to have been supported by every high level Iraqi official thus far in coalition custody but which may still be due to fear of retribution—there are several conclusions to be drawn.

THE ABSENCE OF WMD SHOWS NON-PROLIFERATION EFFORTS WORKED IN IRAQ

Arms control skeptics are confronted with the likelihood that intelligence has proven to be seriously unreliable in assessing a major proliferation threat and that multilateral non-proliferation and containment efforts were apparently quite effective. Moreover, of the plausible explanations for the absence of any evidence, all but the argument that Saddam hid them so well they will not be found until eventually revealed by key Iraqis tend to reinforce arguments for formal non-proliferation measures. Even this argument is weak, for unless major hidden stocks or hidden facilities are discovered, it will be difficult to make the case that international pressure based on multilateral arrangements was of little use in constraining Iraq's WMD programme. Broadly speaking, containment—

sanctions and inspections based on multilateral arrangements—appears to have been quite successful in drastically limiting Iraqi weapons programmes to the point where they posed no immediate threat to their neighbors, much less the United States.

DOES IRAQ PROVIDE A MODEL FOR FUTURE NON-PROLIFERATION EFFORTS?

On the other hand, believers in the efficacy of classic non-proliferation measures have to face the fact that the Iraq case is *sui generis*. From this perspective, it is the exception that proves the rule. The discrediting of intelligence in the case of Iraq notwithstanding, the standard critiques of non-proliferation regime remain valid. If the explanation for the mystery of the absent WMD is that Saddam put his programme into deep hibernation, it is nonetheless evident that only the extraordinary circumstances from Iraq's defeat in 1991 to the direct threat of invasion in early 2003 could have put sufficient pressure on Iraq to force the Iraqi WMD programme into such a state of dormancy. Given that such pressure would be extremely difficult to impose on any other state via currently existing multilaterally agreed arrangements, it is unclear how the success, partial or otherwise, of non-proliferation and disarmament measures in Iraq provides answers to the broader question of how to shore up the global non-proliferation regime. Can the Iraq experience be a useful paradigm for other suspected proliferant states where there is no basis for the uniquely intrusive inspection regime imposed on Iraq after the first Gulf War and where the threat of invasion is not an option? It might be argued that the international community remains free to apply severe sanctions and impose an inspection regime on North Korea or Iran. Although there is currently no consensus in the international community for measures stronger than diplomatic pressure, it remains possible that an agreement might ultimately be reached to take more significant steps in these cases. Although it is difficult to imagine the set of circumstances, apart from aggression on their part, under which the international community would be currently willing or even able to impose Iraq-style inspections on these countries, it is conceivable that pressure could be applied incrementally to the point where the international community might feel justified in threatening the use of force. But for that to occur a renewed sense of international unity will be necessary.

THE MILITARY SOLUTION—PROS AND CONS

The fact that Saddam's WMD programme may have been rendered inactive for the duration of international pressure also does not completely deal with the fact that the true Iraqi threat lay in the long-term potential for dormant programmes to be reactivated after the eventual lifting of sanctions. According to this way of thinking, removing Saddam from power was justified because international pressure—including hundreds of thousands of troops deployed in the desert—was not indefinitely sustainable and there was little reason to suppose Saddam would not reconstitute his WMD programmes as soon as he could safely do so. The second Gulf War has clearly solved this aspect of the problem.

One underlying practical flaw in this view of non-proliferation—that because capabilities cannot be controlled and ultimately it is intentions that pose the real threat, so that safety lies in getting rid of leaders with bad intentions—is that it tends to locate the source of the problem exclusively in one man or an existing regime. Unless the invading power is willing and able to completely rebuild and remake the former rogue state, the risk remains that successor regimes may be tempted eventually to reconstitute the weapons programmes. That possibility aside, as the US is learning, occupation and rebuilding can be expensive both in terms of cash and soldiers' lives. Moreover, and apart from the risk of greatly increased ill-will generated among the Arab and broader Muslim world by the invasion, there are at least two other major drawbacks to such “non-cooperative threat reduction”:¹⁵ the risk of dissemination of know-how and materials in the post-invasion chaos and the risk that other states will choose to accelerate their weapons programmes for deterrence purposes. It is possible that weapons materials, perhaps nuclear or radioactive material, were disseminated either deliberately—as the US speculated at one point, sent outside Iraq—or unintentionally in the chaos at unguarded facilities after the collapse of the Iraqi regime and might have ended up in the hands of terrorists. Another serious concern is that Iraqi weapons scientists may end up communicating their knowledge to terrorist groups.¹⁶ While it remains to be seen whether the looting at Iraqi nuclear sites will result in terrorists acquiring radioactive materials for a dirty bomb, the other drawback—the risk of triggering a breakout by other proliferators—may well be actual. The second Gulf War has eliminated the potential Iraqi threat but at the likely cost of strengthening the North Korean one. Although North Korean nuclear bluffing had begun to escalate well before the Iraq

conflict in response, perhaps, to their designation as a member of the “Axis of Evil,” actual hostilities seem to have provoked a variety of responses from Pyongyang, from calls for negotiation to bellicose self-justification, including the statement that “The Iraq war teaches a lesson that in order to prevent a war and defend the security of a country and the sovereignty of a nation, it is necessary to have a powerful physical deterrent.”¹⁷ It would be painfully ironic if a war fought to eliminate a potential threat from weapons of mass destruction had resulted in increasing that threat. The military solution—at least, as a unilateral act unsanctioned by international law—would thus appear to have significant practical and diplomatic limitations.

INTERNATIONAL ARRANGEMENTS REMAIN VITAL TO NON-PROLIFERATION

Despite its denigration of the United Nations and multilateral arrangements, the Bush administration was careful to base its arguments for the use of force in response to Iraqi violations on United Nations resolutions and possession of weapons in defiance of international norms and treaties, and the exhaustion of diplomatic means of resolving the problem. Their responses in progress to the Iranian nuclear programme and the North Korean crisis are equally based within the context of these states' international obligations. On the other hand, the thus-far encouraging international response to Iran's nuclear ambitions may be demonstrating that the flaws of multilateral instruments lie less in themselves than in the collective will of member states to enforce them.¹⁸ Perhaps the bad taste left by the rancor over Iraq in early 2003 is leading to a tacit recognition that the only answer is a stronger multilateral response, that states must face up to their collective responsibilities. While the Bush administration does not exclude the eventual, hypothetical recourse to unilateral action in these cases, it is proceeding in a manner such that such action could be justified as a last resort, while at the same time there are encouraging signs on the multilateral front. Thus even unilateralists need multilateral arrangements, while multilateralists might be starting to recognize the need for more active participation in defense of the global non-proliferation regime.

WHAT WOULD EVENTUAL DISCOVERY OF CONCRETE EVIDENCE SIGNIFY?

If and when evidence of recent Iraqi WMD activity is finally uncovered—and it seems very difficult to believe that something will not ultimately be found—then much depends on the quality and quantity. On the one hand, eventual major discoveries of significant stocks of weapons or major fabrication facilities—in readily usable condition—would justify those who have claimed that the Iraqi capacity for deception demonstrates the futility of inspection regimes, as well as restoring some credibility to intelligence. Anything short of the US and the UK's dire pre-war claims, however, would not be sufficient to alter the basic analysis that inspections and sanctions were sufficient to contain an Iraqi threat whose real danger lay in the long-term potential for breakout. Certainly, further discoveries of the decade-old buried-in-the-backyard centrifuge parts and blueprints type will not be adequate.

A WAY FORWARD?

Traditionally, the burden of proof in international non-proliferation regimes has been on the international community and its instruments, the various secretariats and inspectorates charged with the administration of arms control and non-proliferation treaties and conventions and their verification/compliance mechanisms. Under the polite rules of multilateral diplomacy absence of proof was generally accepted as de facto evidence of compliance—even when suspicions of cheating were widespread. The US has long been critical of this kind of diplomatic hypocrisy where weapons of mass destruction are concerned—summed up in the saying “absence of evidence is not evidence of absence.” From the nuclear field the classic example of course, was the ease with which Iraq was able to pursue its clandestine nuclear weapons programme while IAEA inspectors carried out their work at otherwise innocent Iraqi power and research reactors. This revelation led in 1997 to the development by the IAEA of an additional protocol designed to make existing NPT member states nuclear safeguards obligations more effective and give inspectors greater powers, notably in searching undeclared facilities. While this additional protocol will undoubtedly provide much greater confidence in member states' compliance, six years later 110 out of the 188 NPT states have yet to adopt

it. At a minimum, adoption of the protocol needs to be universal, but to put sufficient pressure on determined proliferators, more is needed. Moreover, such measures are not equally useful in dealing with the problem of biological weapons.

Under current conditions—the sole superpower highly suspicious of the United Nations and multilateral schemes, much of the rest of the world doubtful about unilateral measures, but by and large unable to do much about it—what could realistically improve the traditional regimes on the one hand and avoid the dangers of pure unilateralism or ad-hoc measures on the other? One result of the Iraq experience is that countries under suspicion may not be too eager to agree to exceptionally intrusive inspection regimes if they believe that the US will attack them regardless of any proof. Thus any major new multilateral measures would have to be placed in a larger context. Henry Sokolski has suggested that in a world with growing numbers of potential and actual nuclear proliferators it will be necessary to have unilateral measures pre-approved by the United Nations—authorization to board suspected shipping, for example. As a quid pro quo, he also proposes a ban on WMD deployments overseas with the US forgoing current North Atlantic Treaty Organization (NATO) and other tactical nuclear deployments (in peacetime, presumably). This would also be a useful step in the context of strengthening commitments to the NPT. Biological and chemical weapons deployments, of course, are already proscribed.¹⁹

How to reintroduce a new role for formal multilateralism while remaining realistic? Could we imagine stricter and multilaterally agreed standards for states of serious concern? The principal advantage would be an international legal basis for applying intense and effective pressure without having to go through the vagaries of getting Security Council consensus on the measures and consequences to be applied in each case. While the Iraq case may have been *sui generis*, a presumption in international law that action is necessary, rather than merely possible, would help provide a basis for the international community to avoid repeating the worst aspects of the Iraq experience in the future. The principal disadvantage would be the usual difficulty in getting the Security Council consensus to invoke the stricter standards provisions in the first place, not to mention getting general agreement for such a system at all. The US, to cite just one example, would likely be leery of agreeing to potentially submit its biological weapons defence programmes to scrutiny under such

an arrangement. One can easily multiply objections. What would be the criteria? Would member states bring a case to the Security Council for adjudication, complete with intelligence-derived evidence? After Secretary Powell's presentation of the case against Iraq, one would hesitate to recommend that such a procedure be institutionalized.

These obstacles, along with its natural preference for ad hoc and bilateral arrangements have led the Bush administration recently to begin looking for ways to use existing legal, diplomatic, economic and other tools on a bilateral basis to strengthen non-proliferation, introduced in President Bush's May 31 speech in Poland as the Proliferation Security Initiative.²⁰ The driving force for this initiative, initially involving some ten countries, appears to have been frustration over the lack of any international legal basis to detain the shipment of short-range missiles from North Korea to Yemen intercepted by the Spanish navy in December 2002. It thus appears increasingly likely that a kind of pragmatic ad hoc multilateralism will take the place of pure unilateralism, if indeed pure unilateralism was ever the Bush administration's preferred means of action. This is emerging clearly in the cases of North Korea, and especially Iran.

Yet there is a desperate need for something that can if not replace the tattered arms control and non-proliferation norms, then at least reinforce them. The alternative is ad hoc and unilateral action based on little more than US national interest. While this may work to US advantage in the short run, it is a poor basis for stability and global security and provides little in the way of legitimacy. Despite all the reasons for pessimism, however, the hazy outlines of a potential compromise can be discerned through the smoke of the Iraq experience: The successes and failures of the non-proliferation regime teach the lesson that the system works best when its key players can present a unified front and that a solid basis in international law makes it easier for that to happen. Both the US and other key players in the system would stand to gain enormously from a reinvigoration of international cooperation against non-proliferation—but for that to happen, compromises will be necessary. The US might in effect recommit to multilateral institutions and practices on the one hand, while other key members of the international community would commit to new and tougher mechanisms for applying pressure to cheaters and to supporting them in spirit as well as letter. The US might, for example, take relatively low-cost goodwill measures such as renouncing the counterproductive pursuit of new low yield and earth penetrating nuclear weapons and ideas

for resumption of nuclear testing. Another useful measure would be a serious and high profile effort to push at least to find a creative way to move forward on measures to strengthen the Biological and Toxin Weapons Convention. Not a return to the complete protocol, perhaps, but enough commitment to lay the ground for a measure that would strengthen the BTWC without putting in place a verification system that risks producing nothing but false negatives. Other key players who have much to lose from a further degradation of the non-proliferation regime would at the same time energetically demonstrate its benefits by increasing pressure, for example, on Iran and North Korea pending the elaboration of stricter controls.

CONCLUSION

In a commentary on Fred Iklé's famous 1961 Foreign Affairs essay "After Detection, What?" Brad Roberts noted that "a decade after revelations about illicit weapons programmes in Iraq and North Korea, the multilateral treaty regime suffers a growing crisis of confidence about its efficacy in the face of willful violation. This is a crisis of confidence in arms control... and in the roles of the major powers and the UN Security Council in securing arms control compliance."²¹ "Roberts envisaged the military response we have recently seen as one possible answer to the problem. What he did not envisage—or anyone else, for that matter—was that the treaty regime could be further shaken by the non-discovery of weapons of mass destruction. In a further irony, neither he nor anyone else, for that matter, could have imagined that a military invasion of the suspected proliferator would have proved no more effective in finding WMD than intrusive inspections. In the case of Iraq, at least, the use of force was no better than the available non-military mechanisms, and perhaps worse if the result was to scatter weapons, materials or know-how, as may have been the case. The best that can be said for the use of force in the non-proliferation context is that it calls a halt to potential future breakout—albeit at the risk of inciting breakout elsewhere from states that see a crash programme to achieve a deterrent as the only protection against coercion.

On balance, the global non-proliferation regime has not been particularly strengthened by the invasion and non-detection of WMD in Iraq. But the failure to find conclusive evidence of an active WMD programme in Iraq is extremely damaging to arguments for unilateral action

(outside of multilateral legal frameworks) as well. On the one hand, we emerge with the conclusion that the non-proliferation regime and containment did a vastly better job than its critics gave it credit for during the life of Iraq's containment—but, and this is a major caveat—ultimately only because it was backed by the highly credible threat of invasion. In order to enforce international law, it was necessary to make a threat of war credible to the point of convincing all concerned that international law would be disregarded if needed. Although Saddam's potential to resurrect his WMD programme has certainly been eliminated, this success has come at enormous cost. Future action of this kind will be seen as having no more legitimacy than that of superior force, while evidence of the kind that might once have earned the US respect for its persistence in facing unpleasant facts will tend to be discounted. The conclusion is that the non-proliferation regime needs teeth and the teeth need legitimacy. What is needed is a mechanism that would apply a higher level of pressure to states of concern and thus establish a bias in international law towards action against flagrant proliferators.

Thus, somewhat ironically, unilateral action against Iraq has had the unexpected result of demonstrating that for all its flaws, the utility of multilateral non-proliferation is not at an end. Ad hoc actions have their attraction, but they are not the solution to the problem. The time has come to rethink the problem of multilateral non-proliferation. Most urgently, the imperatives of national security need to be re-reconciled with the international legitimacy that the multilateral non-proliferation regime provides.

Notes

- ¹ Essentially, the Nuclear Non-proliferation Treaty (NPT), the Chemical Weapons Convention (CWC), the Biological and Toxin Weapons Convention (BWC), the Comprehensive Nuclear Test Ban Treaty (CTBT), their international secretariats and governing bodies, a number of other treaties, and various other international arrangements designed to limit the spread of critical materials for the production of weapons of mass destruction.
- ² United Nations document S/1998/332, 16 April 1998, <http://www.un.org/Depts/unscom/sres98-332.htm>.

- ³ See, for example, former nuclear inspector David Albright, "Masters of Deception", in *Bulletin of the Atomic Scientists*, Vol. 54, No. 3, May/June 1998.
- ⁴ *Iraqi Mobile Biological Warfare Agent Production Plants 28 May 2003*, CIA, http://www.odci.gov/cia/reports/iraqi_mobile_plants/index.html.
- ⁵ Ibid. and *CIA Statement on Recently Acquired Iraqi Centrifuge Equipment*, CIA, 26 June 2003, http://www.odci.gov/cia/wmd/iraqi_centrifuge_equipment.htm.
- ⁶ Lt. Gen. James Conway, commander of the US 1st Marine Expeditionary Force, stated: "We've been to virtually every ammunition supply point between the Kuwaiti border and Baghdad, but they're simply not there." See "US Intel 'Simply Wrong' on Chemical Attack—General", *Reuters*, 31 May 2003.
- ⁷ John Barry, "Exclusive: The Defector's Secrets", *Newsweek*, 3 March 2003. The full transcript of Kamel's conversation with UNSCOM head Rolf Ekeus may be found at www.fair.org/press-release/kamel.pdf.
- ⁸ "Rumsfeld suggests Iraq dumped arsenal early", *International Herald Tribune*, 29 May 2003.
- ⁹ Michael Schrage, "No Weapons, No Matter. We Called Saddam's Bluff", *The Washington Post*, 11 May 2003.
- ¹⁰ For a full treatment of the allegations that intelligence was distorted, suppressed and wilfully misinterpreted by the Bush administration see John B. Judis and Spencer Ackerman, "The First Casualty", *The New Republic*, 19 June 2003.
- ¹¹ See *Statement by David Kay on the Interim Progress Report on the Activities of the Iraq Survey Group (ISG)*, CIA, 2 October 2003, http://www.odci.gov/cia/public_affairs/speeches/2003/david_kay_10022003.html.
- ¹² "CIA Said to Find North Korean Nuclear Advances", *The New York Times*, 1 July 2003. One "senior official" is quoted as saying: "What we are told is that it would take perhaps six months [after completing the reprocessing of fuel rods into plutonium] ... but after Iraq, who knows how good those estimates are?"
- ¹³ "An Update on Inspection", report by Hans Blix to the United Nations Security Council, 27 January 2003, <http://www.un.org/Depts/unmovic/Bx27.htm>.
- ¹⁴ "An Interview with Hans Blix", *Arms Control Today*, http://www.armscontrol.org/events/blixinterview_june03.asp; "As Arms Inspectors Arrive, Row Erupts Over US Smears", *The Guardian*, 19

November 2002; and “Blix Says US/UK Not Giving Him Enough Intelligence”, *Reuters*, 20 December 2002.

- ¹⁵ I am indebted to Dr Sharam Chubin of the Geneva Center for Security Policy for this felicitous phrase.
- ¹⁶ See Rolf Ekeus, “Iraq’s Real Weapons Threat”, *The Washington Post*, 29 June 2003, for a concise exposition of this view. Former UNSCOM chairman Ekeus argues strongly that removing Saddam militarily was justified by the potential for a reconstituted Iraqi WMD programme while criticizing the “rather bizarre political focus on the search for rusting drums and pieces of munitions...”
- ¹⁷ North Korean Foreign Ministry spokesman quoted in “North Korea Reprocessing Nuclear Fuel”, *The Guardian*, 18 April 2003.
- ¹⁸ After years of fruitless American insistence that Russia end nuclear cooperation with Iran, Russia now appears ready to use its leverage with Teheran to urge it to sign unconditionally the Additional Protocol to permit full IAEA inspections and to obtain an Iranian guarantee that spent fuel from the Bushehr light-water reactors would be returned to Russia. “Russia Presses Iran to Accept Scrutiny of the Nuclear Sites”, *The New York Times*, 1 July 2003 and Brenda Shaffer, “The Russians May be Ready to Help”, *The Herald Tribune*, 12 June 2003.
- ¹⁹ “Pyongyang: The Case for Nonproliferation with Teeth”, *Arms Control Today*, 20 May 2003, http://www.armscontrol.org/act/2003_05/sokolski_may03.asp.
- ²⁰ Wade Boese, “U.S. Pushes Initiative to Block Shipments of WMD, Missiles”, *Arms Control Today*, July/August 2003, http://www.armscontrol.org/act/2003_07-08/securityinitiative_julaug03.asp.
- ²¹ Brad Roberts, “Revisiting Fred Iklé’s 1961 Question, ‘After Detection—What?’”, *Nonproliferation Review*, Spring 2001, <http://cns.miis.edu/pubs/npr/vol08/81/81rob.pdf>.

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