

# Issue Brief for Congress

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## **Iraq: Weapons Threat, Compliance, Sanctions, and U.S. Policy**

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## Iraq: Weapons Threat, Compliance, Sanctions, and U.S. Policy

### SUMMARY

The United States is currently attempting to maintain an international consensus for strict enforcement of all applicable U.N. Security Council resolutions on Iraq, and is threatening and preparing for military action against Iraq if Iraq does not soon disarm. In the wake of the September 11 attacks, there has been heightened U.S. concern about the potential threat posed by Iraq's weapons of mass destruction programs and alleged ties to terrorist groups. However, many governments say they would only support U.S. military action to disarm Iraq and, in the process, change Iraq's regime, if the action is taken with U.N. authorization.

Part of the debate over U.S. policy centers on whether Iraq's WMD programs can be ended through a reintroduction of U.N. weapons inspectors. During 1991-1998, a U.N. Special Commission on Iraq (UNSCOM) made considerable progress in dismantling and monitoring Iraq's but was unable to finish verifying Iraq's claim that it has destroyed all its WMD or related equipment. Iraq's refusal of full cooperation with UNSCOM eventually prompted U.S.-British military action in December 1998. All inspectors withdrew and Iraq was unmonitored during 1998-2002, leaving uncertainty as to

the status of Iraq's WMD programs. Many of the questions about those programs remain unresolved.

On November 10, 1994, as required, Iraq accepted the U.N.-designated land border with Kuwait (confirmed by Resolution 833) as well as Kuwaiti sovereignty. Iraq has not detailed the fate of about 600 Kuwaitis still missing from the war and has not returned all Kuwaiti property taken. Iraq initially rejected a 1991 U.N.-sponsored "oil-for-food" program to address humanitarian needs, but it later accepted a revised version of that plan, operational since December 1996.

Iraq is deemed non-compliant in other areas, especially human rights issues. A U.S.-led no-fly zone has provided some protection to Kurdish northern Iraq since April 1991. Since August 1992, a no-fly zone has been enforced over southern Iraq, where historically repressed Iraqi Shiites are concentrated. The zone was expanded in August 1996, but Iraq nonetheless maintains a substantial ground presence in the south. Iraq has openly challenged both no-fly zones since December 1998.

## **MOST RECENT DEVELOPMENTS**

On November 8, the Security Council unanimously adopted Resolution 1441, giving U.N. weapons inspectors new authorities; new U.N. inspections began November 27. On December 7, Iraq handed over a 12,000 page declaration of all its past WMD programs and WMD useful capabilities. U.N. weapons inspectors criticized Iraq in their report to the Security Council on January 27, 2003, maintaining Iraq has cooperated on “process but not substance.” In his State of the Union message on January 28 and other statements, President Bush said that Iraq has not complied with Resolution 1441, that “time is running out” for peaceful disarmament efforts, and that the United States would lead a coalition to disarm Iraq if peaceful efforts fail.

## **BACKGROUND AND ANALYSIS**

In response to Iraq’s August 2, 1990 invasion of Kuwait, U.N. Security Council **Resolution 678** (November 29, 1990) authorized the use of force to expel Iraq from Kuwait. After the war (January 16 - February 28, 1991), a ceasefire was declared in Security Council **Resolution 686** (March 2, 1991). The primary ceasefire resolution is Security Council **Resolution 687** (April 3, 1991), requiring Iraq – in return for a graduated easing of sanctions – to end its weapons of mass destruction programs, recognize Kuwait, account for missing Kuwaitis, return Kuwaiti property, and end support for terrorism. Iraq accepted the resolution. Iraq was required by **Resolution 688** (April 5, 1991) to end repression of its people. In forty reviews (at 60-day intervals) of Iraqi compliance from the end of the Gulf war in 1991 until August 20, 1998, the U.N. Security Council maintained the comprehensive international sanctions on Iraq’s imports and exports imposed by Security Council Resolution 661 (August 6, 1990). After the breakdown of the original weapons inspections regime in December 1998, two additional major resolutions (**1284** of December 17, 1999 and **1441** of November 8, 2002) were adopted in an effort to continue U.N. disarmament efforts in Iraq. (See CRS Report RL30472, *Iraq: Oil-for-Food Program*; and CRS Report RL31339, *Iraq: U.S. Efforts to Change the Regime*.)

## **Weapons of Mass Destruction (WMD)**

During 1991-1998, a U.N. Special Commission (UNSCOM) and the International Atomic Energy Agency (IAEA) attempted to verify that Iraq had ended all its prohibited WMD programs and to establish a long-term monitoring program of WMD facilities (**Resolution 715**, October 11, 1991). The monitoring program, accepted by Iraq in November 1993, consisted of visitations and technical surveillance of about 300 sites. Under **Resolution 1051** (March 27, 1996), UNSCOM inspected (at point of entry and at end-use destination) Iraq’s imports of any dual use items.

Confrontations over access to suspected WMD sites began almost as soon as UNSCOM began operations in April 1991, prompting adoption of **Resolution 707** (August 15, 1991) requiring unfettered access to all sites and disclosure by Iraq of all its WMD suppliers.

During March 1996 - October 1997, Iraq impeded inspectors from entering Iraqi security service and military facilities, and it interfered with some UNSCOM flights. These actions, which were not resolved by a March 1996 side agreement between UNSCOM and Iraq governing pre-notification of inspections of defense and security sites, prompted **Resolution 1060** (June 12, 1996) and other Council statements (such as on June 13, 1997) demanding Iraqi cooperation. **Resolution 1115** (June 21, 1997) threatened travel restrictions against Iraqi officials committing the infractions, and **Resolution 1134** (October 23, 1997) again threatened a travel ban and suspended sanctions reviews until April 1998.

**1997-1998 Crises.** Six days after that vote, Iraq barred American UNSCOM personnel from conducting inspections, and on November 13, 1997, it expelled the Americans. **Resolution 1137** (November 12, 1997), imposed travel restrictions on Iraqi officials. (On November 13, 1997, the House adopted H.Res. 322, backing unilateral U.S. military action as a last resort. The Senate did not act on a similar resolution, S.Con.Res. 71, because some Senators wanted it to call for the United States to overthrow Saddam Hussein.) In November 1997 and February 1998, Russia and U.N. Secretary General Kofi Annan, respectively, brokered temporary compromises that enabled UNSCOM to resume inspections. The February 23, 1998 U.N.-Iraq agreement provided for access to eight “presidential sites” by weapons inspectors and diplomatic observers. **Resolution 1154** (March 2, 1998) accepted that agreement, threatening “the severest consequences” if Iraq reneged. Iraq allowed presidential site inspections (1,058 buildings) during March 26-April 3, 1998, the travel ban on Iraqi officials was lifted, and sanctions reviews resumed.

Iraq subsequently refused to implement an UNSCOM plan for completing its work and, in August 1998, barred UNSCOM from inspecting previously inspected facilities. The Senate and House passed a resolution, S.J.Res. 54 (P.L. 105-235, signed August 14, 1998), declaring Iraq in “material breach” of the ceasefire. The Security Council adopted **Resolution 1194** (September 9, 1998) demanding full unfettered inspections access and suspending sanctions reviews. On October 30, 1998, the Security Council offered an easing of sanctions if Iraq fulfilled WMD and other outstanding requirements, but Iraq demanded an immediate end to sanctions and it ceased cooperation with UNSCOM (but not the IAEA). The U.N. Security Council adopted **Resolution 1205** (November 5, 1998), deeming the Iraqi action a “flagrant violation” of the February 1998 U.N.-Iraq agreement. On November 14, 1998, with the United States about to launch airstrikes, Iraq pledged cooperation, averting airstrikes but prompting President Clinton to openly declare a U.S. policy of regime change.

**Operation Desert Fox and Aftermath.** After a month of testing Iraq’s cooperation, UNSCOM said on December 15, 1998 that Iraq refused to yield known WMD-related documents and that it was obstructing inspections. All inspectors withdrew and a 70-hour U.S. and British bombing campaign followed (Operation Desert Fox, December 16-19, 1998), directed against Iraqi WMD-capable facilities and military and security targets. After almost one year of negotiations, the Security Council adopted **Resolution 1284** (December 17, 1999) by a vote of 11- 0 (Russia, France, China, and Malaysia abstained), providing, subject to a vote of the Security Council, for the suspension of most sanctions if Iraq “fully cooperates” with a new WMD inspection body (UNMOVIC, U.N. Monitoring, Verification and Inspection Commission). The resolution called for inspectors to determine within 60 days of reentering Iraq what WMD elimination tasks remain and to report to the Council every three months. Under Resolution 1284, Iraq’s revenues would be subject to undefined financial controls, exports of dual use items to Iraq would still require U.N. approval, and

arms exports would remain banned. In January 2000, former IAEA director Hans Blix was named head of UNMOVIC. In the absence of Iraq's agreement to allow in-country inspections during 1999-2002, UNMOVIC's staff of 63 – all employees of the United Nations and not their individual governments – reviewed documents and imagery, interviewed informants, and reviewed civilian contracts for goods purchased by Iraq to determine whether certain items subject to review ("Goods Review List" items) are included.

**"Axis of Evil" and U.S. Policy.** Amid a growing debate over whether to expand the post-September 11 "war on terrorism" to Iraq, based partly on fears that Iraq could provide WMD to terrorist groups, on November 26, 2001, and again in his January 29, 2002 State of the Union message, President Bush threatened unspecified action against Iraq to change Iraq's regime and prevent its re-emergence as a threat. In the latter speech he described Iraq as part of an "axis of evil" along with Iran and North Korea. One month prior to that speech, the House passed H.J.Res. 75 on December 20, 2001, by a vote of 392-12. The resolution called Iraq's refusal to readmit U.N. inspectors a "material breach" of its international obligations and a mounting threat to peace and security. The resolution, not taken up in the Senate, did not explicitly authorize U.S. military action.

The Administration's renewed call for a change of regime was predicated on the assertion that Iraq is rebuilding banned WMD capabilities that, based on Saddam Hussein's record, Iraq would not hesitate to use against the United States directly or against U.S. allies and friends. A British intelligence assessment (September 2002) and a CIA assessment (October 2002) asserted that Iraq had tried to buy fissile material in Africa, that it had bought other nuclear related components, that Iraq could deploy chemical weapons against its internal opponents on short notice, that it is developing missiles with ranges of up to 1,000 km, and that it is developing biological weapons in mobile laboratories. Neither report asserted that Iraq had made any major nuclear weapons breakthrough since inspections ended in 1998. Other reports say Iraq has illicitly imported conventional arms equipment, including from Belarus, Ukraine, and the former Yugoslavia, possibly shipped through Syria.

**Resolution 1441.** After an internal debate, the Administration decided to work through the United Nations Security Council to force Iraq to eliminate its suspected WMD. In a September 12, 2002 speech before the United Nations, President Bush implicitly threatened U.S. military action, unilateral if necessary, if the United Nations did not enforce existing resolutions on Iraq. Four days later, Iraq pledged to admit UNMOVIC inspectors without conditions, reversing a position taken during several meetings with the United Nations in 2002: March 7, May 1-3, and July 4-5 (in Vienna). Iraq and UNMOVIC reached agreement (October 1, 2002) on procedures for new inspections, but the Bush Administration called the agreement insufficient and insisted on a new Security Council resolution specifying consequences for non-compliance and enhancing inspection authorities.

As U.N. negotiations continued on a new resolution, on October 11 Congress completed work on a resolution (H.J.Res. 114, P.L. 107-243) authorizing the use of U.S. armed forces against Iraq. After several weeks of negotiations, on November 8, 2002 the Security Council unanimously adopted Resolution 1441, with the following key provisions:

- (1) declaring Iraq in material breach of pre-existing resolutions;
- (2) giving Iraq 7 days to accept the resolution and 30 days (until December 8) to provide a full declaration of all WMD programs;

- (3) requiring new inspections to begin within 45 days (December 23) and an interim progress report within 60 days thereafter (no later than February 21, 2003);
  - (4) declaring all sites, including presidential sites, subject to unfettered inspections;
  - (5) giving UNMOVIC the right to interview Iraqis in private, including taking them outside Iraq, and to freeze activity at a suspect site;
  - (6) forbidding Iraq from taking hostile acts against any country upholding U.N. resolutions, a provision that would appear to cover Iraq's defiance of the "no fly zones;" and
  - (7) giving UNMOVIC the authority to report Iraqi non-compliance and the Security Council as a whole the opportunity to meet to consider how to respond to Iraqi non-compliance.
- This has been interpreted by France and some other countries as requiring a second resolution to authorize force, although the United States disputes that interpretation.

Iraq accepted the resolution on November 13 in a defiant letter, and inspections began on November 27. Press reports say the inspectors have received full access thus far in their approximately 500 inspections covering about 350 sites, as of the end of January 2003. On December 7, Iraq submitted its required declaration, but after comparing the Iraqi declaration to U.S. intelligence assessments, the Bush Administration said on December 19 that there were material omissions that constitute a further material breach of Iraq's obligations, particularly Iraq's failure to address the outstanding questions from the 1991-1998 inspections. Blix also criticized the declaration as failing to clear up outstanding questions, although neither he nor any other country called the declaration a material breach of Resolution 1441.

As of January 22, President Bush and other senior U.S. officials have said that Iraq is not actively cooperating with the new disarmament effort by failing to take such steps as On January 27, in their required briefings to the Security Council, Blix and IAEA head Baradei said Iraq had failed to provide active cooperation on substance, by failing to volunteer documents, blocking U-2 overflights, refusing to encourage scientists to be interviewed privately, and failing to provide evidence of having destroyed past WMD programs. Neither inspection chief said they had found evidence Iraq is manufacturing WMD, although they did find evidence Iraq had illicitly imported dual use items and had tested missiles of ranges slightly over the allowed range. The briefing followed Blix and Baradei's January 19-20 visit to Baghdad, reaching a ten-point agreement to improve Iraqi cooperation on some of these points, including an Iraqi pledge to search for more chemical warheads such as the 12 discovered by UNMOVIC (believed empty, but undergoing testing) on January 16. In his State of the Union message on January 28, President Bush used the U.N. criticism to bolster his assertion that Iraq must and would be disarmed, by force if necessary, with or without U.N. authorization. In an effort to address opposition to a war by France, Germany, and others, the President announced in the speech that Secretary of State Powell would present intelligence to the Council on February 5. The Council will also receive another briefing from Blix and Baradei on February 14. Some European countries, and others, have come out in support of the Administration demand that Iraq disarm or face military action. The President's speech paralleled new U.S. deployments to the Gulf of an additional 100,000 U.S. forces to the Persian Gulf, which would, when completed, bring the total personnel to more than 150,000 by mid-February. At the same time, Turkey, Saudi Arabia, and other regional governments have been meeting to try to devise a peaceful solution to the crisis, possibly including persuading Saddam Hussein to go into exile.

The following summarizes outstanding issues on Iraq's WMD.

## Nuclear Program

**Current Status.** The United States believes that Iraq retains the expertise (about 7,000 scientists and engineers) and intention to rebuild its nuclear program. Administration officials have pointed particularly to reputed attempts to purchase materials abroad, including uranium from Niger and aluminum tubes that could be used in a nuclear weapons program. IAEA chief Mohammad Baradei said in early January 2003 that the IAEA now believes the tubes were for use in conventional rocket programs, although their importation was not legal under the international sanctions regime. The IAEA said on January 27 that it had found no evidence Iraq had restarted its nuclear program.

**Unresolved Questions.** During 1991-1994, despite Iraq's initial declaration that it had no nuclear weapons facilities or unsafeguarded material, UNSCOM/IAEA uncovered and dismantled a previously-undeclared network of about 40 nuclear research facilities, including three clandestine uranium enrichment programs (electromagnetic, centrifuge, and chemical isotope separation) as well as laboratory-scale plutonium separation program. Inspectors found and dismantled (in 1992) Iraq's nuclear weapons development program, and they found evidence of development of a radiological weapon ("dirty bomb"), which scatters nuclear material without an explosion. UNSCOM removed from Iraq all discovered nuclear reactor fuel, fresh and irradiated. Following the defection of Hussein Kamil (Saddam's son-in-law and former WMD production czar) in August 1995, Iraq revealed it had launched a crash program in August 1990 to produce a nuclear weapon as quickly as possible by diverting fuel from its reactors for a nuclear weapon. The IAEA report of December 1, 1995 said that, if Iraq had proceeded with its crash program, Iraq might have produced a nuclear weapon by December 1992.

In 1997, the IAEA said that Iraq's nuclear program had been ended and that it had a relatively complete picture of Iraq's nuclear suppliers. A May 15, 1998 Security Council statement reflected a U.S.-Russian agreement to close the nuclear file if Iraq cleared up outstanding issues (nuclear design drawings, documents, and the fate of some nuclear equipment). An IAEA report of July 1998 indicated that some questions still remained, and the United States did not agree to close the file. In May 2000, the IAEA destroyed a nuclear centrifuge that Iraq had stored in Jordan in 1991. In January 2002, as it has in each of the past 3 years, IAEA inspectors verified that several tons of uranium remained sealed, acting under Iraq's commitments under the 1968 Nuclear Nonproliferation Treaty.

## Chemical Weapons

UNSCOM destroyed all chemical weapons materiel uncovered — 38,500 munitions, 480,000 liters of chemical agents, 1.8 million liters of precursor chemicals, and 426 pieces of production equipment items — and the destruction operation formally ended on June 14, 1994. However, the fate of about 31,600 chemical shells, 550 mustard gas bombs, and 4,000 tons of chemical precursors, remains unknown. (In January 2003, UNMOVIC and Iraq found 16 chemical artillery munitions, believed empty.) Iraq refused to yield an Air Force document, found in July 1998 by UNSCOM, that could explain their fate, although Iraq allowed UNSCOM to take notes from it. Iraq did include the document in its December 7 declaration, and UNSCOM said on January 27 that the document indicates a discrepancy of



6,500 chemical bombs (13,000 bombs the document says were used versus 19,500 bombs Iraq had previously said were used). In February 1998 UNSCOM discovered that shells taken from Iraq in 1996 contained 97% pure mustard gas, indicating it was freshly produced.

The primary remaining chemical weapons questions center on VX nerve agent, which Iraq did not include in its initial postwar declarations and of which no stockpile was ever located, for which Iraq has not demonstrated it destroyed the chemical precursors. By 1995 UNSCOM had uncovered enough circumstantial evidence to force Iraq to admit to producing about 4 tons of VX, but UNSCOM believed that Iraq had imported enough precursor — about 600 tons — to produce 200 tons of the agent. In late June 1998, UNSCOM revealed that some unearthed missile warheads, tested in a U.S. Army lab, contained traces of VX, contradicting Iraq's assertions that it had not succeeded in stabilizing the agent. Separate French and Swiss tests did not find conclusive evidence of VX. About 170 chemical sites were under long-term monitoring. Iraq has not signed the Chemical Weapons Convention that took effect April 29, 1997. The October 2002 CIA assessment says Iraq has renewed chemical weapons production and probably stocked a few hundred tons of agent.

## Biological Weapons

**Current Status.** Biological weapons is the area with more outstanding and unresolved issues than any other weapons area; Iraq's previous biological declarations were considered neither credible nor verifiable, and very little new was apparently included in Iraq's December 7 declaration. U.S. officials say Iraq has been developing unmanned aerial vehicles that could be used to deliver biological or chemical weapons. The October 2002 CIA assessment said that Iraq had reactivated its biological program and that most elements of the program are larger and more advanced than they were before the Gulf war. The White House said in late December 2001 that the anthrax used in the October 2001 anthrax mailing attacks appeared to be from a domestic source, such as a U.S. military laboratory.

**Unresolved Questions.** Iraq did not initially (1991) declare any biological materials, weapons, research, or facilities, and no biological weapons stockpile was ever uncovered. UNSCOM focused its investigation initially on the major biological research and development site at Salman Pak, but Iraq partially buried that facility shortly before the first inspections began. In August 1991, Iraq admitted that it had a biological weapons research program. In July 1995, Iraq modified its admission by acknowledging it had an offensive biological weapons program and that it had produced 19,000 liters of botulinum, 8,400 liters of anthrax, and 2,000 liters of aflatoxin, clostridium, and ricin. In August 1995, Iraq confessed to having produced 191 biological bombs, of which 25 were missile warheads, loaded with anthrax, botulinum, and aflatoxin for use in the Gulf war. Iraq claims to have destroyed the bombs after the Gulf conflict but has furnished no hard evidence proving that. According to UNSCOM, Iraq imported a total of 34 tons of growth media for producing biological agents during the 1980s, of which 4 tons remained unaccounted for. Iraq did not give UNSCOM information on its development of drop tanks and aerosol generators for biological weapons. UNSCOM had 86 biological sites under long-term monitoring. UNSCOM discovered and dismantled the Al Hakam facility on June 20, 1996.

## Ballistic Missiles

**Current Status.** Iraq is making progress in developing permitted-range missiles – the Ababil and Samoud programs – according to the January 2002 CIA report to Congress and, prior to Desert Fox, UNSCOM had been monitoring about 63 missile sites and 159 items of equipment, as well as 2,000 permitted missiles. In early May 2002, the United States presented to the U.N. Security Council evidence that Iraq is developing missiles of ranges beyond the permitted 150 km. Iraq’s December 7 declaration said some flight tests of these missiles did exceed the allowed range by about 50 km, and Blix noted in his January 27 report that the Samoud II and “Fatah” missile programs might have prohibited ranges and contain engine and guidance components illegally imported. U.S. analysts believe Iraq might be concealing as many as 12 Scud-like missiles and that it is manufacturing propellants for missiles of ranges longer than those allowed.

**Unresolved Questions.** U.N. Security Council Resolution 687 requires the destruction of all Iraqi ballistic missiles with a range greater than 150 kilometers. UNSCOM accounted for 817 of 819 Soviet-supplied Scud missiles, 130 of which survived the Gulf war, as well as all 14 declared mobile launchers and 60 fixed launch pads. UNSCOM’s October 1998 report said it had been able to account for at least 43 of the 45 chemical and biological (CBW) warheads Iraq said it unilaterally destroyed in 1991. (The warheads were unearthed in mid-1998.) An additional 30 chemical warheads were destroyed under UNSCOM supervision. UNSCOM also accounted for all but 50 conventional Scud warheads and said it made progress establishing a material balance for Scud engine components. Unresolved issues include missile program documentation, 300 tons of special missile propellant, and indigenous missile production (30 indigenously-made warheads and 7 missiles).

There is evidence of past Iraqi cheating on missile issues. In December 1995, after Jordan reported seizing 115 Russian-made missile guidance components allegedly bound for Iraq, UNSCOM said Iraq had procured some missile components since 1991, a violation of sanctions. (That month, UNSCOM retrieved prohibited missile guidance gyroscopes, suitable for a 2,000 mile range missile, from Iraq’s Tigris River, apparently procured from Russia’s defense-industrial establishment.) UNSCOM also had evidence that Iraq was conducting secret flight tests and research on missiles of prohibited ranges.

## Human Rights/War Crimes Issues

U.S. and U.N. human rights reports since the Gulf war have repeatedly described Iraq as a gross violator of human rights. In 1994, the Clinton Administration said it was considering presenting a case against Iraq to the International Court of Justice under the 1948 Genocide Convention. U.N. Rapporteur for Iraq Max Van der Stoep’s February 1994 report said that Convention might be violated by Iraq’s abuses against the Shiite “Marsh Arabs” in southern Iraq, including drainage of the marshes where they live. In February 2002, Iraq allowed the U.N. human rights rapporteur for Iraq, Andreas Mavromatis of Cyprus, to visit Iraq, the first such visit since 1992. On October 20, 2002, Saddam Hussein granted an amnesty and released virtually all prisoners in Iraq, calling the move gratitude for his purported “100%” victory in a referendum on his leadership on October 15, 2002. On

January 21, the Bush Administration released a 34-page document entitled “Apparatus of Lies,” detailing Iraq’s alleged disinformation and propaganda efforts.

**War Crimes Trial.** U.N. Security Council Resolution 674 (October 29, 1990) calls on all states or organizations to provide information on Iraq’s war-related atrocities to the United Nations. The Foreign Relations Authorization Act for FY1992, (P.L. 102-138, October 28, 1991, section 301) stated the sense of Congress that the President should propose to the U.N. Security Council a war crimes tribunal for Saddam Hussein. Similar legislation was later passed, including H.Con.Res. 137, (passed the House November 13, 1997); S.Con.Res. 78, (passed the Senate March 13, 1998); and a provision of the Iraq Liberation Act (P.L. 105-338, signed October 31, 1998).

A U.S. Army report on possible war crimes was released on March 19, 1993, after Clinton took office. Since April 1997, the Administration has supported INDICT, a private organization that publicizes alleged Iraqi war crimes and seeks the arrest of 12 alleged Iraqi war criminals, including Saddam and his two sons. Although apparently lacking international support, in August 2000 then U.S. Ambassador-At-Large for War Crimes David Scheffer said that the United States wanted to see an Iraq war crimes tribunal established, focusing on “nine major criminal episodes.” These include the use of chemical weapons against Kurdish civilians at Halabja (March 16, 1988, killing 5,000 Kurds) and the forced relocation of Kurds in the “Anfal” campaign (February 1988, in which an estimated 50,000 to 182,000 Kurds died); the use of chemical weapons against Iran; post-war crimes against humanity (the Kurds and the Marsh Arabs); war crimes against Kuwait (including oil field fires) and coalition forces; and other allegations. In FY2001 and again in FY2002, the State Department contributed \$4 million to a U.N. “Iraq War Crimes Commission,” to be spent if a U.N. tribunal for Iraq war crimes is formed. (For more information on the issue and on U.S. funding for Iraqi war crimes issues, see CRS Report RL31339, *Iraq: U.S. Efforts to Change the Regime.*)

## International Terrorism/September 11

Resolution 687 required Iraq to end support for international terrorism, and Iraq made a declaration to that effect to the U.N. Security Council. FBI Director Robert Mueller said in early May 2002 that, after an exhaustive FBI and CIA investigation, no direct link has been found between Iraq and any of the September 11 hijackers, although some still assert that hijacker Mohammad Atta met with Iraqi intelligence in Prague in April 2001. Senior U.S. officials said in late September 2002, and again in January 2003, that there are contacts between Al Qaeda members and Iraq, that Iraq had helped Al Qaeda train with chemical weapons at some point in the past, and that the Ansar Islam faction in northern Iraq has contacts with Iraq. Others believe that Baghdad has little contact with Al Qaeda because it differs with Iraq’s secular ideology and would hurt Iraq’s efforts to improve relations with Egypt and other moderate Arab states that are threatened by Al Qaeda. The CIA told Congress on October 7, 2002 that Iraq would likely not conduct a terrorist attack using WMD against the United States unless there were a U.S.-Iraq war.

Iraq remains on the U.S. list of state sponsors of terrorism, and according to the State Department’s reports on international terrorism (most recently the report for 2001, issued May 21, 2002), continues to harbor the Abu Nidal Organization and the Palestine Liberation

Front of Abu Abbas. In August 2002, Abu Nidal died (committed suicide or was killed) as Iraqi police went to arrest him for alleged contacts with foreign governments opposed to Baghdad. Iraq says it is paying the families of Palestinian suicide bombers \$25,000, and some press reports say Iraq is cultivating Palestinians that might unleash anti-U.S. or anti-Israel terrorism in the event of a U.S.-led war against Iraq. (See CRS Report RL31119, *Terrorism: Near Eastern Groups and State Sponsors*, 2002.)

## Iraq-Kuwait Issues

Resolution 1284 requires reports on the issues discussed below but, unlike Resolution 687, does not link the easing of any sanctions to Iraqi compliance on Kuwait-related issues. Resolution 1441 does not impose any new Kuwait-related requirements on Iraq.

**Border Issues/Kuwaiti Sovereignty.** Resolution 687 required Iraq to annul its annexation of Kuwait, directed the U.N. Secretary-General to demarcate the Iraq-Kuwait border, and established a demilitarized zone 10 kilometers into Iraq and 5 kilometers into Kuwait. **Resolution 773** (August 26, 1992) endorsed border decisions taken by the Iraq-Kuwait Boundary Demarcation Commission (established May 2, 1991) that, in November 1992, finished demarcating the Iraq-Kuwait border as described in an October 1963 agreement between Iraq and Kuwait. The border took effect January 15, 1993. The new line deprived Iraq of part of Umm Qasr port and a strip of the Rumaylah oil field, which straddles the border. On March 18, 1993, the Commission determined the sea border, allowing both countries access to the Gulf. **Resolution 833** (May 27, 1993) demanded that Iraq and Kuwait accept the final border demarcation. On November 10, 1994, Iraq formally recognized Kuwait in a motion signed by Saddam Hussein. At the Arab summit in Beirut (March 27-29, 2002), Iraq reaffirmed its commitment to Kuwait's territorial integrity and pledged to cooperate to determine the fate of missing Kuwaitis (see below), earning a Arab statement of opposition to a U.S. attack on Iraq and a step toward reconciliation with Kuwait. On December 7, 2002, Saddam Hussein issued an "apology" to Kuwait for the invasion, but Kuwait rejected it as insincere.

The 32-nation U.N. Iraq-Kuwait Observer Mission (UNIKOM), established by Resolutions 687 and 689 April 9, 1991), continues to monitor border violations. The United States contributes 11 personnel to the 197 observers in UNIKOM, which is considered a U.N. peacekeeping operation. Under **Resolution 806** (February 5, 1993), passed after Iraqi incursions into the demilitarized zone in January 1993 (and other incidents), a 908-member Bengali troop contingent supplements the observer group. Kuwait furnishes two-thirds of UNIKOM's \$51 million annual budget. The United States contributes about \$4.5 million per year to UNIKOM.

**Kuwaiti Detainees and Property.** Security Council **Resolutions 686** and **687** require Iraq to account for Kuwaiti and other nationals detained in Iraq during the Persian Gulf crisis. Of an initial 628 Kuwaiti cases, 608 are unresolved (ICRC figure as of May 2000), as are the cases of an additional 17 Saudi nationals. Iraq has admitted to having arrested and detained 126 Kuwaitis, but did not provide enough information to resolve their fate. Only three cases have been resolved since 1995. Since January 1995, Iraq and Kuwait were meeting every month on the Iraq-Kuwait border, along with U.S., British, French, and Saudi representatives, but Iraq has boycotted the meetings since Operation Desert Fox. In

February 2000, retired Russian diplomat Yuli Vorontsov was appointed to a new post (created by Resolution 1284) of U.N. coordinator on the issue of missing Kuwaiti persons and unreturned property. Iraq has not yet allowed him to visit Iraq, and in April, June, and August 2000, as well as in March, April, and June 2001, the Security Council has issued statements of concern about the lack of progress. However, on December 12, 2002, Iraq publicly invited Vorontsov to visit. In January 2003, Iraq held two meetings (January 8 and January 22) with Kuwait and Saudi Arabia on the issue, pledging to bring forward new information on the fate of the missing, although the meetings reportedly did not resolve any outstanding cases. In April 2002, Iraq offered to receive a U.S. team to discuss the case of missing Gulf war Navy pilot Michael Speicher, but Defense Department officials declined on doubts of the benefits of a visit.

U.N. Security Council **Resolutions 686** and **687** require Iraq to return all property seized from Kuwait. In the first few years after the cease-fire, Iraq returned some Kuwaiti civilian and military equipment, including U.S.-made Improved Hawk air defense missiles, and a June 2000 Secretary General report and a June 19, 2000 Security Council statement did note that Iraq had returned “a substantial amount of property.” However, since 1994, U.S. officials have accused Iraq of returning to Kuwait some captured Iranian equipment that was never part of Kuwait’s arsenal and of using Kuwaiti missiles and armored personnel carriers during Iraq’s October 1994 troop move toward the Kuwait border. The United Nations and Kuwait say Iraq has not returned extensive Kuwaiti state archives and museum pieces, as well as military equipment including eight Mirage F-1 aircraft, 245 Russian-made fighting vehicles, 90 M113 armored personnel carriers, one Hawk battery, 3,750 Tow anti-tank missiles, and 675 Russian-made surface-to-air missile batteries. Iraq claims the materiel was left behind or destroyed when Iraq evacuated Kuwait. U.N. Secretary General Annan said at the conclusion of the July 4-5, 2002 inspections talks that agreement had been reached on a “mechanism” for Iraq to return Kuwait’s state archives (six truckloads of documents) to Kuwait. Iraq began the return of tons of documents on October 20, 2002, although Kuwait says preliminary assessments suggest some key archives were not returned.

## Reparations Payments

The U.N. Security Council has set up a mechanism for compensating the victims of Iraq’s invasion of Kuwait (individuals, governments, and corporations), using 25% (reduced from 30% in December 2000) of the proceeds from Iraqi oil sales. As of June 21, 2002 – following an award of \$4.5 billion to Kuwait’s government and state-owned oil industry – the Compensation Commission (UNCC) has approved claims worth about \$43.6 billion, of a total asserted value of \$320 billion claims submitted. Following an April 2002 payout of about \$1 billion, which included \$800 million in payments to Kuwait, the UNCC has paid out about \$14.8 billion. Awards to U.S. claimants thus far total over \$666 million. In September 2000, the UNCC governing council approved an award to Kuwait of \$15.9 billion for oil revenues lost because of the Iraqi occupation and the aftermath of the war (burning oil wells), although current payment schedules will provide only a small fraction of that award (about \$50 million) until 2003. In June 2001, the UNCC approved \$243 million in payments to all of Iraq’s immediate neighbors (except Turkey) for studies of Gulf war environmental damage. Of this amount, \$5 million was approved for Iraq’s legal expenses to counter the expected environmental reparations claims. Kuwait was awarded \$700 million in October 2002 to cover the cost of removing Iraqi mines laid in the Gulf war.

Several legislative proposals (“Iraq Claims Act”) to distribute Iraq’s frozen assets (about \$2.2 billion) in the United States (separate from the U.N. compensation process) were not enacted, because of differences over categories of claimants that should receive priority. In the 107<sup>th</sup> Congress, H.R. 1632 proposes to distribute Iraq’s frozen assets primarily to U.S. victims of the Iraqi invasion of Kuwait. Some might argue that this group of claimants is covered under the U.N. process discussed above and that the frozen assets in the United States should be used for those with claims resulting from events prior to the Iraqi invasion. (See CRS Report 98-240, *Iraq: Compensation and Assets Issues*.)

## U.S. Policy, Sanctions, and the Oil-for-Food Program

As international concerns for the plight of the Iraqi people have grown, the United States has had increasing difficulty maintaining support for international sanctions. The oil-for-food program (OFF), established by **Resolution 986** (April 15, 1995) and in operation since December 1996, has been progressively modified to improve Iraq’s living standards, and the United States has eased its own sanctions to align them with the program. Of the Security Council permanent members, the United States has set the highest standards for full Iraqi compliance that would trigger a lifting of sanctions. The United States rules out direct dialogue with Iraq on the grounds that Iraq’s level of compliance does not justify talks. (See CRS Report RL30472, *Iraq: Oil-For-Food Program, Sanctions, and Illicit Trade*, which also covers U.S. trade regulations for Iraq and Iraq’s illicit trade with its neighbors.)

**“Smart Sanctions” Initiative.** During a February 2001 trip to the Middle East, Secretary of State Powell presented a U.S. plan to facilitate exports of civilian equipment to Iraq in exchange for measures to ensure that no militarily useful goods reach Iraq. The Bush Administration portrayed its initiative as an effort to rebuild containment by narrowing differences within the Security Council and limiting sanctions erosion. France, Russia, and China have generally sought to ease sanctions in order to give Iraq incentives to cooperate with the international community. After a year of debate within the Council on the U.S. plan, on May 14, 2002, the Security Council adopted Resolution 1409, providing for goods to be exported to Iraq without Sanctions Committee scrutiny. This largely removes the opportunity for Sanctions Committee members to place contracts for Iraq on “hold.” Military items remain banned outright and GRL items are subject to export after review by UNMOVIC. The new export procedures were placed into effect in late July 2002. Resolution 1447 (December 4) rolled the program over for another six months and contained a pledge to add, within 30 days, certain items to the GRL. These are items that the United States said could be used by Iraq to counter a U.S. military offensive. The Security Council added 36 U.S.-suggested items to the GRL on December 30, 2002 (Resolution 1454).

Formally, comprehensive U.S. trade sanctions against Iraq have been in place since Iraq’s 1990 invasion (Executive Order 12722 of August 2, 1990, Executive Order 12724 of August 6, 1990, and the Iraq Sanctions Act of 1990, Section 586 of P.L. 101-513). Since then, U.S. trade regulations have been amended to align them with the OFF program. U.S. imports of Iraqi oil have increased since 1999 and now account for almost half of Iraq’s oil exports, amounting to about 600,000 barrels per day as of late 2002. In the 107<sup>th</sup> Congress, S. 1170, introduced July 12, 2001, would bar U.S. imports of Iraqi oil; the measure was adopted by the Senate on April 18, 2002, as an amendment to an energy bill (H.R. 4) but did not advance further.

Prior to the OFF program, funds for civilian goods and the implementation of U.N. resolutions on Iraq were drawn from frozen Iraqi assets transferred — or direct contributions — to a U.N. escrow account pursuant to Resolution 778 (October 2, 1992). Total U.S. transfers to the escrow account, which matched contributions from other countries, reached \$200 million, the maximum required under Resolution 778. These transfers were being repaid to the United States from proceeds of the OFF program. Resolutions 1284 and 1302 (June 8, 2000) suspended reimbursements until the end of 2000; about \$173 million was due back to the United States. Repayments resumed in 2001.

## **Iraq's Illicit Trade with Its Neighbors**

As regional fears of Iraq have eased and sympathy for the Iraqi people has grown, the United States has had difficulty persuading regional governments to enforce the sanctions regime. Improving sanctions enforcement by Iraq's neighbors was dropped from the U.S. targeted-sanctions proposals adopted in Resolution 1409 because of regional resistance. With the exception of Kuwait, virtually all the neighboring governments want to avoid a U.S.-led war against Iraq, fearing chaos inside Iraq and unintended political fallout. However, in deference to their strategic ties to the United States, most of the Gulf states (with the apparent exception of Saudi Arabia and the UAE), Turkey, and Jordan appear willing to host some number of U.S. forces even if the United States proceeds with an offensive without U.N. approval. (See also CRS Report RL31533, *Persian Gulf: Issues for U.S. Policy*, 2003.)

**Jordan.** Since 1992, despite Jordan's economic linkages with Iraq, the United States has determined that Jordan's compliance with the U.N. sanctions regime on Iraq is satisfactory. Every year since FY1994, foreign aid appropriations laws (P.L. 103-87, P.L. 103-306, P.L. 104-107, P.L. 104-208, P.L. 105-118, P.L. 105-277, P.L. 106-113, P.L. 106-429, and P.L. 107-115), have denied U.S. aid to any country that does not comply with the sanctions against Iraq, though these laws do not mention Jordan specifically. The Administration has routinely waived sanctions in order to provide aid to Jordan, which is a key U.S. ally in the Middle East peace process. Recognizing Jordan's economic need, the Sanctions Committee "takes note of" Jordan's purchases of discounted Iraqi oil which is exchanged for Jordanian goods and write-downs in Iraqi debt to Jordan. (See CRS Issue Brief IB93085, *Jordan: U.S. Relations and Bilateral Issues*.)

**Turkey.** Turkey estimates that it has lost \$35 billion as a result of the sanctions. The Turkish government regulates and taxes the illicit importation of about \$400 million per year in Iraqi energy products by Turkish truck drivers. U.S. sanctions against Turkey for this trade have been waived each year. Turkey returned its Ambassador to Iraq in January 2001.

**Iran.** In enforcing the embargo, two U.S. ships lead a Multinational Interdiction Force (MIF) that conducts maritime searches in the Persian Gulf to prevent the smuggling of oil and other high-value exports. From its high of about \$600 million in 2000, smuggling through this route has fallen substantially since early 2001, indicating that Iraq may be increasingly using the pipeline to Syria (see below). In June 2002, U.S. military officials attributed the drop-off in part to more robust enforcement techniques by the MIF, but which might also reflect Iran's cooperation with sanctions enforcement. Iran's cooperation with the sanctions comes despite the substantial improvement in Iranian-Iraqi relations since 1995, and Iran publicly opposes a unilateral U.S. attack on Iraq. The two exchanged 6,000

prisoners from the Iran-Iraq war in April 1998 and smaller batches of prisoners and remains since. In early October 2000, the two agreed to abide by the 1975 Algiers Accords that delineated their border, and Iran's Foreign Minister visited later in the month, a sign of accelerating rapprochement. Iraq's Foreign Minister visited Iran in January 2002, and Iran released over 600 Iraqi prisoners still held. Nonetheless, press reports in November 2002 say Iran will likely tacitly cooperate with a U.S. military offensive against Iraq, in part to gain greater participation in a post-Saddam regime for Iranian-backed Shiite Islamist groups. Iran is allowing Iraqi dissidents to cross from Iran into northern Iraq for a meeting in February 2003.

**Syria.** Syria and Iraq began a warming trend in relations by reopening their border in 1997; this trend has accelerated since the July 2000 accession of Bashar Assad to the presidency of Syria. Since late 1998, the two countries have benefitted from the reopening of the Iraq-Syria oil pipeline, closed since 1982, and Iraq has been sending about 180,000 - 250,000 barrels per day of oil through the line, under a "swap" arrangement in which Syria uses the oil domestically and exports an equivalent extra amount of its own oil. In May 2001, Iraq and Syria reopened diplomatic missions in each others' capitals, and there have been unconfirmed reports that Iraq might have moved some WMD equipment into Syria to avoid detection by UNMOVIC. Nonetheless, Syria voted in favor of Resolution 1441.

## **Protecting/Supporting Iraq's Opposition**

The current debate on Iraq policy includes the question of the role, if any, for the Iraqi opposition in a U.S. military action against Iraq and in a post-Saddam Iraq. A *Washington Post* report of June 16, 2002 said that in early 2002, President Bush, either as a prelude to or alternative to a ground offensive, authorized stepped up covert action by the CIA and U.S. special forces to destabilize Saddam. During August 9 and 10, 2002, senior members of six major Iraqi opposition groups visited Washington for meetings with senior U.S. officials. These groups sponsored a major meeting in London (December 13 - 17, 2002) that established a 65-member "follow-up committee," in which Iranian-backed Shiite Islamists are heavily represented. The Bush Administration reportedly has decided to oppose the formation of a provisional government in advance of Saddam's overthrow, and the "follow-up committee" reportedly plans to meet in northern Iraq in February 2003.

Despite strains within the opposition, on December 9, 2002, President Bush announced he had authorized the draw down of \$92 million (the remainder of the \$97 million total authorized) of defense articles and services authorized under the Iraq Liberation Act (ILA, P.L. 105-338, October 31, 1998) for the opposition. He also named six new groups as eligible to receive such aid. Some Iraqis might receive combat training. More extensive coverage is included in CRS Report RL31339, *Iraq: U.S. Efforts to Change the Regime*.

## **Military Action and Long-Term Containment**

The current U.S. military posture in the Persian Gulf is focused on containing Iraq. Currently, the United States and Britain enforce two "no fly zones" to provide a measure of protection for Iraq's Kurdish minority and other objects of regime repression and to contain Iraq militarily. To enforce the no-fly zones, the two allies invoke U.N. Resolution 678 (November 29, 1990, authorizing use of force to expel Iraq from Kuwait), 687 (the main ceasefire resolution), 688 (human rights), and the Safwan Accords (the March 3, 1991



cease-fire agreements between Iraq and the coalition forces that banned Iraqi interference with allied air operations). Resolutions 678 and 687 were written under Chapter VII of the U.N. Charter, dealing with peace and security, and are interpreted as allowing military action to enforce these resolutions. Resolution 688 (human rights) was not written under Chapter VII, nor does that or any other resolution specifically establish no fly zones.

To justify Operation Desert Fox, the Administration cited additional justification from Resolution 1154 (see above), which warned of “the severest consequences” for non-compliance. Section 1095 of P.L. 102-190, the Defense Authorization Act for FY1992, signed December 5, 1991, expressed Congress’ support for “all necessary means” to achieve the goals of U.N. Security Council Resolution 687. (For information on the U.S. military posture in the Gulf, see CRS Report RL31533, *Persian Gulf: Issues for U.S. Policy*, 2003.) In instances of strikes on Iraq for no fly zone or other infractions, the Administration also has cited congressional action (primarily P.L. 102-1 of January 12, 1991), authorizing military action to expel Iraq from Kuwait. The Administration asserts that hostile acts by Iraq against coalition aircraft enforcing the zones is a violation of the provision of Resolution 1441 requiring Iraq not to undertake hostile acts against countries upholding U.N. resolutions on Iraq, although most other countries appear to differ with this U.S. interpretation.

**Kurds/Operation Northern Watch (ONW).** The northern no fly zone was set up in April 1991, to protect the Kurds in northern Iraq. The zone extends north of the 36<sup>th</sup> parallel. After the September 1996 Iraqi incursion into northern Iraq, humanitarian aspects of ONW were ended and France ended its ONW participation. On June 18, 2002, Turkey renewed for six months basing rights at Incirlik Air Base for the 24 American aircraft and about 1,300 U.S. forces (plus allied forces). However, Turkey fears that ONW protects the anti-Turkish Kurdistan Workers’ Party (PKK), which takes refuge in parts of northern Iraq, and Turkey has made repeated attacks against the PKK there since May 1997. The Defense Department said on January 29, 2003, that some U.S. personnel had begun operating in northern Iraq in preparation for possible war.

The two leading Iraqi Kurdish parties, the KDP led by Mas’ud Barzani and the Patriotic Union of Kurdistan (PUK) led by Jalal Talabani, agreed in May 1992 to share power after parliamentary and executive elections. In May 1994, tensions between them flared into clashes, and the KDP turned to Baghdad for backing. In August 1996, Iraqi forces helped the KDP capture Irbil, seat of the Kurdish regional government. With U.S. mediation, the Kurdish parties agreed on October 23, 1996, to a cease-fire and the establishment of a 400-man peace monitoring force composed mainly of Turkomans (75% of the force). The United States funded the force with FY1997 funds of \$3 million for peacekeeping (Section 451 of the Foreign Assistance Act), plus about \$4 million in DoD drawdowns for vehicles and communications gear (Section 552 of the FAA).

Also set up was a peace supervisory group consisting of the United States, Britain, Turkey, the PUK, the KDP, and Iraqi Turkomans. A tenuous cease-fire has held since November 1997 and the KDP and PUK leaders signed an agreement in Washington in September 1998 to work toward resolving the main outstanding issues (sharing of revenues and control over the Kurdish regional government). Reconciliation efforts showed substantial progress in 2002; on October 4, 2002, the two Kurdish factions jointly reconvened the Kurdish regional parliament for the first time since their 1994 clashes. In June 2002, the United States gave the Kurds \$3.1 million in new assistance to help continue

the reconciliation process, amid press reports of U.S. proposals for U.S. special forces teams to begin working with the Kurds as part of an overthrow effort against Saddam (*New York Times*, July 5, 2002). Both parties are represented in the opposition umbrella Iraqi National Congress, and both also maintain a dialogue with Baghdad.

**Shiite Muslims/Operation Southern Watch.** Shiites constitute a majority in Iraq but historically have been repressed. The U.S.-led coalition declared a no-fly zone over southern Iraq (south of the 32nd parallel) to protect the Shiites on August 26, 1992 (Operation Southern Watch), although the overflights are primarily part of the U.S. containment strategy. The United States and the United Kingdom (but not France) expanded the zone up to the 33rd parallel on September 4, 1996; France ended its participation entirely after Desert Fox. In response to Iraq's movement of troops toward Kuwait in October 1994, Security Council **Resolution 949** (October 15, 1994) demanded Iraq not deploy forces to threaten its neighbors. The United States and Britain interpret this as authorizing military action if Iraq enhances (numbers or quality of armament) its forces below the 32nd parallel. Such enhancements include Iraq's movement of air defense equipment into the zones.

During March 2000-March 2001, Iraqi air defenses fired at or near fixed radar or allied aircraft enforcing both zones on 500 occasions, in many cases provoking U.S. strikes on the activated missile batteries. On February 16, 2001, the United States and Britain struck elements of that network north of the southern no fly zone, in response to Iraq's increasing ability to target U.S. aircraft. U.S. aircraft did not go beyond the zone. During 2002, Iraqi air defenses and related infrastructure were bombed about 60 times in response to about 200 provocations, and U.S. strikes on Iraqi facilities have become more frequent since late 2002 in conjunction with U.S. preparations for possible military action against Iraq. On December 23, Iraq shot down a U.S. "Predator" drone.

**Costs of Containment.** Saudi Arabia, Kuwait, and the United Arab Emirates contributed a total of \$37 billion to the \$61.1 billion in incremental costs of Desert Storm, all of which has been paid. From the end of the Gulf war until the end of FY2001, the Defense Department has incurred about \$9 billion in costs to contain Iraq and provide humanitarian aid to the Kurds. About \$1.2 billion was spent in FY2002. The Department of Defense, under the Weapons of Mass Destruction Control Act of 1992 (22 U.S.C. 5859a), assisted UNSCOM by providing U-2 surveillance flights (suspended since the December 15, 1998 UNSCOM pullout), intelligence, personnel, equipment, and logistical support, at a cost of about \$15 million per year. (See CRS Issue Brief IB94040, *Peacekeeping: Issues of U.S. Military Involvement*.)