



Iraq: Former Regime Weapons Programs and Outstanding U.N. Issues

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Specialist in Middle Eastern Affairs

July 29, 2009

Congressional Research Service

7-....

www.crs.gov

RL32379

CRS Report for Congress

Prepared for Members and Committees of Congress

Summary

After asserting that Iraq had failed to comply with U.N. Security Council resolutions that required Iraq to rid itself of weapons of mass destruction (WMD), the Bush Administration began military action against Iraq on March 19, 2003, and the regime of Saddam Hussein fell on April 9. U.N. Security Council resolution 1483, adopted May 22, 2003, lifted sanctions on Iraq and provided for the possibility that U.N. inspectors could return to Iraq, although the United States, not the United Nations, conducted the post-war WMD searches. U.S. teams attempted to find WMD and related production programs. Only minor finds of actual WMD were made. A major report (September 30, 2004) by U.S. experts performing post-war WMD searches (the “Duelfer report”) has concluded that pre-war U.S. assessments of Iraq’s WMD capabilities were mostly incorrect but that analysis of Saddam’s WMD intentions was probably accurate. Iraq remains barred from developing WMD by the Saddam-era U.N Security Council resolutions, even though there is a new government in Baghdad that is relatively democratic, and even though the formal WMD search effort was ended by the U.N. Security Council.

Part of the pre-war debate over U.S. policy centered on whether Iraq’s WMD programs could be ended through U.N. weapons inspections. During 1991-1998, a U.N. Special Commission on Iraq (UNSCOM) made considerable progress in dismantling and monitoring Iraq’s WMD but was unable to verify Iraq’s claim that it had destroyed all its WMD and related equipment. Iraq’s refusal of full cooperation with UNSCOM eventually prompted U.S.-British military action—a series of air strikes designated as Operation Desert Fox—in December 1998. All inspectors withdrew and Iraq was largely uninspected during 1998-2002.

Many of the Saddam-era U.N. Security Council resolutions on Iraq-Kuwait issues remain in force, to the chagrin of Iraqi leaders who want all Chapter 7 U.N. resolutions ended. Article 25 of the U.S.-Iraq “Security Agreement,” which took effect January 1, 2009, commits the United States to help Iraq obtain the terminate the application of these resolutions, and a U.N. report on outstanding Chapter 7 issues is due later in 2009. Even before the 2003 ousting of Saddam, the Iraq-Kuwait land and sea border was settled, and U.N. border monitoring was ended, under applicable U.N. resolutions. However a U.N. envoy remains empowered to continue to try to determine the fate of about 605 Kuwaitis and other nationals still missing from the first Gulf war as well as of Kuwait’s national archives. The cases of 369 Kuwaiti and 3rd-party nationals remain unresolved, and the unknown whereabouts of the Kuwaiti National Archives continues to be a point of tension. Iraq is still required to devote 5% of all revenue to pay compensation to the victims of the Iraqi invasion of Kuwait, including over \$25 billion still owed to Kuwaiti claimants. In addition, Iraq’s oil monies continue to be audited by an international advisory board, and a U.N. mission in Iraq is empowered to work in Iraq on humanitarian issues.

Saddam Hussein’s regime was widely deemed non-compliant in other areas, especially human rights issues. Since the fall of the regime, U.S. teams confirmed at least 50 mass graves containing primarily Shiites and Kurds that Saddam Hussein had characterized as a threat to the regime. The Iraqi Special Tribunal conducted two trials against Saddam and sentenced him to death by hanging on November 5, 2006. The sentence was carried out on December 30, 2006. Other close associates are now undergoing legal proceedings that will lead to their trial on crimes against humanity.

This report will be updated as warranted by developments. Please see CRS Report RL31339, *Iraq: Post-Saddam Governance and Security*.

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Saddam Hussein's regime had been considered a threat to U.S. interests since its August 2, 1990 invasion of Kuwait, although there had been disagreements within the U.S. government over whether that threat could be managed through containment. The Administration of George W. Bush asserted the threat could not be contained and needed to be removed militarily in an operation to change Iraq's regime and replace it with a democratic government.

In response to Iraq's invasion of Kuwait, U.N. Security Council **Resolution 678** (November 29, 1990) authorized the use of force to expel Iraq from Kuwait. The United States put together a coalition consisting of about 500,000 U.S. personnel and 225,000 non-U.S. personnel from 35 nations, of which about 100,000 were from Arab/Islamic nations. The United States incurred about \$61.1 billion in incremental costs of "Operation Desert Storm" (January 16 - February 28, 1991), which liberated Kuwait, but foreign contributors offset almost about \$54 billion of the U.S. costs. Saudi Arabia, Kuwait, and the United Arab Emirates contributed about \$37 billion of that figure. In the 2003 war to overthrow Saddam Hussein (Operation Iraqi Freedom, OIF), U.S. personnel in the invasion force were about 230,000, joined by over 20,000 forces from 34 other nations. No foreign nations reimbursed U.S. incremental costs of OIF.

After the 1991 war, a cease-fire was declared in Security Council **Resolution 686** (March 2, 1991). A more permanent cease-fire resolution was Security Council **Resolution 687** (April 3, 1991), which required 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, cooperate with the demarcation of the Iraq-Kuwait border, 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 resume U.N. disarmament efforts. Including Resolution 1441, a total of 17 U.N. resolutions required Iraq's complete dismantlement of its WMD programs. This report discusses those resolutions and provisions that are still active, and those whose application to Iraq have been terminated both before and since the fall of Saddam Hussein's regime.

History of Weapons Inspections

From April 1991 until December 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), U.N. weapons inspectors monitored, 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 two weeks later, expelled American inspectors. In response, **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 inspectors and diplomats. **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, restricted inspections. 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 resumed full cooperation with UNSCOM, but Iraq demanded an immediate end to sanctions and 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 strikes but prompting President Clinton to openly declare a U.S. policy of regime change.

Operation Desert Fox and Resolution 1284

After a month of testing Iraq’s cooperation, UNSCOM reported on December 15, 1998 that Iraq was still obstructing its work. 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. In an attempt to persuade Iraq to allow a resumption of inspections, after almost one year of negotiations, the Security Council adopted **Resolution 1284** (December 17, 1999). It provided, 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 tasks remain and to issue reports every three months. 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 about 60—all employees of the United Nations and not their individual governments—reviewed WMD-related documents and imagery, interviewed informants, and scrutinized civilian imports to ensure that no sensitive technologies entered Iraq without U.N. approval.

“Axis of Evil” and U.S. Policy

After the September 11, 2001, attacks on the United States, there was a debate over whether to expand the post-September 11 “war on terrorism” to Iraq, based largely on concerns that Iraq might use WMD against the United States or provide WMD to terrorist groups. On December 20, 2001, the House passed H.J.Res. 75, by a vote of 392-12, calling 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.

In early-mid 2002 the Bush Administration began to build a case that the United States must act preemptively to change Iraq's regime. Assertions that Iraq possessed WMD and had active ties to terrorist groups including Al Qaeda formed the core of the Administration case for invading Iraq. However, in several speeches, senior Administration officials, including the President, maintained that regime change would end horrific regime human rights abuses and pave the way for democracy in Iraq that would spread throughout the region and deprive terrorist groups of fertile ground for recruitment.

After an internal debate, the Administration decided to work with the U.N. Security Council to give Iraq a final opportunity to cooperate with U.N. inspections. In a September 12, 2002 speech before the United Nations, President Bush implicitly threatened U.S. military action 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 early 2002. On October 11, 2002, Congress completed work on a resolution (H.J.Res. 114, P.L. 107-243) authorizing the use of U.S. armed forces against Iraq. The resolution was adopted by a vote of 296-133 in the House, and 77-23 in the Senate.

Resolution 1441

After several weeks of negotiations, on November 8, 2002 the Security Council unanimously adopted Resolution 1441, which (1) declared Iraq in material breach of pre-existing resolutions; (2) gave Iraq until December 8, 2002 to provide a full declaration of all WMD programs; (3) required new inspections to begin by December 23, 2002; (4) declared all sites, including presidential sites, subject to unfettered inspections; (5) gave UNMOVIC the right to interview Iraqis in private, including taking them outside Iraq, and to freeze activity at a suspect site; (6) forbade Iraq from taking hostile acts against any country upholding U.N. resolutions, a provision that appeared to cover Iraq's defiance of the “no fly zones;” and (7) provided for the Security Council to consider how to respond to Iraqi non-compliance. This was interpreted by France and some other countries as requiring a second resolution to authorize force, although the United States disputed that interpretation.

Iraq accepted the resolution on November 13, 2002, in a defiant letter, and inspections began on November 27, 2002. Blix said the inspectors received full access in their inspections of about 450 sites (over 300 by UNMOVIC and 140 by the IAEA). On December 7, 2002, Iraq submitted its

required declaration, but after comparing the Iraqi declaration to U.S. intelligence assessments, the Bush Administration said shortly thereafter that there were material omissions that constituted a further material breach of Iraq's obligations. Blix criticized the declaration as offering "little new information," but he did not call it a material breach. In briefings on the inspections to the Security Council on January 27, February 14, and March 7, 2003, Blix and IAEA head Mohammad Baradei said that Iraq had not fully complied with Resolution 1441 but that Iraq had been providing more active cooperation after February 2003 and that there had been some substantive disarmament (destruction of Al Samoud II missiles).

Maintaining that the inspections process would not lead to Iraq's full disarmament, the United States, Britain, and Spain called for a Security Council vote on a resolution to set a short deadline for Iraq to clearly demonstrate full cooperation and voluntary disarmament or face use of force. After a few weeks of unsuccessful diplomacy, on March 17, 2003, the three countries withdrew their draft resolution. That night, President Bush issued an ultimatum for Saddam Hussein and his sons Uday and Qusay to leave Iraq or face military action. At the same time, Secretary General Annan ordered the U.N. inspectors out of Iraq. Saddam rebuffed the ultimatum, and on March 19, U.S. military action (Operation Iraqi Freedom) began. On April 9, 2003, the regime vacated Baghdad and its senior members went into hiding around Iraq or in neighboring border areas.

Post-War WMD Search and Status of U.N. Resolutions

With all of Iraq under the control of U.S.-led forces as of mid-April 2003, U.S. military-led "Mobile Exploitation Team (MET)" began to search for and catalogue any WMD uncovered. After about a month of operations, the teams announced no confirmed finds of WMD stockpiles, although they discovered chemical weapons protection equipment and some other equipment. In May 2003, the MET turned over its mission to a larger (about 1,500 personnel) "Iraq Survey Group (ISG)." The ISG was led by the U.S. military (the group's head is Brig. General Joseph McMenamin, who replaced Maj.Gen Keith Dayton in July 2004) but consisted partly of civilian technical experts, including some from other countries, who served in previous U.N. inspection missions in Iraq. The chief WMD investigator of the group held the title of "Special Advisor to the Director of Central Intelligence on Iraq's WMD."¹ The first special advisor was former UNSCOM nuclear inspector David Kay. He was replaced in January 2004 by former UNSCOM deputy chief Charles Duelfer.

The ISG was also tasked with uncovering information on the relationship, if any, between Saddam Hussein's regime and Al Qaeda and cataloguing findings of mass graves and other human rights abuses by the Saddam regime.

For the first few months after Saddam's fall, the search effort focused on investigating and exploiting about 1,000 previously suspected WMD sites, a process that yielded few results. After that time, the ISG focused on identifying and interviewing Iraqis who could provide information on previously unknown sites and documents or who had direct knowledge of Iraq's WMD programs. On October 2, 2003, Kay visited Washington to present to Members and others the highlights of his "Interim Progress Report." The major findings, which did not include an

¹ The title of the position is the "Director of Central Intelligence's Special Advisor for WMD in Iraq."

announcement of findings of weapons but did say evidence of hidden programs was found, were presented in his congressional testimony.²

In late October 2003, press reports said the Administration was shifting some personnel and other resources from the WMD search to counterinsurgency missions against an increasingly active and sophisticated resistance. Kay has said this shift of resources contributed to his decision to resign before completing the WMD search.³ In congressional testimony (Senate Armed Services) on January 28, 2004, Kay referred to the failure to find actual WMD weapons, saying U.S. pre-war intelligence on Iraq's WMD was "almost all wrong" and adding that it is "highly unlikely that there were large stockpiles of deployed militarized chemical and biological weapons [in Iraq]." He also testified that Iraq concealed information and activities and therefore clearly violated Resolution 1441 and that Iraq "certainly had the intentions at a point to resume their programs."

On March 30, 2004, Duelfer briefed the Senate Intelligence Committee and the Senate Armed Services Committee, saying that the ISG had made no new breakthroughs but that some new information suggested that Iraq might have been developing a capability to make WMD on short notice. He also said that the ISG would focus on Iraq's intentions and the whole range of questions about what happened to Iraq's WMD programs.⁴ Three U.S. personnel from the ISG were killed in a bombing in late April 2004 as they were investigating a tip on a hidden chemical facility.

September 30, 2004, ISG Report⁵

On September 30, 2004, the ISG released its "comprehensive" report (referred to heretofore as "The Duelfer Report") on its findings. The report largely restated previous ISG findings—that Iraq lacked actual WMD stockpiles and production efforts but retained the intention to erode and evade international sanctions to position itself to eventually resume WMD production. According to the report, Saddam believe that Iran remained a vital threat to Iraq's national survival and that WMD could deter Iran and that the U.S. perception that Iraq retained WMD could deter a potential U.S. attack on Iraq. The report detailed Saddam regime efforts to use loopholes in the U.N.-run "oil-for-food" program and other trade agreements to buy political support around the world for the lifting of sanctions and to procure dual use items that could be used to resume WMD efforts.

The specific findings of the Duelfer report in each WMD category are discussed in the corresponding sections below. The Duelfer report's findings on the alleged abuses of the oil-for-food program will be discussed in CRS Report RL30472, *Iraq: Oil-For-Food Program, Illicit Trade, and Investigations*.

² Statement by David Kay on the Interim Progress Report on the Activities of the Iraq Survey Group before the House Permanent Select Committee on Intelligence, the House Committee on Appropriations, Subcommittee on Defense, and the Senate Select Committee on Intelligence.

³ Zakaria, Tabassum. "U.S. Weapons Hunter Won't Return to Iraq." Reuters News Wire, Jan. 15, 2004.

⁴ Pincus, Walter. "Weapons Inspector Testifies on Hill; Suspected Iraqi Bid to Produce Arms on Short Notice Noted." *Washington Post*, March 31, 2004.

⁵ "Comprehensive Report of the Special Advisor to the Director of Central Intelligence on Iraq's Weapons of Mass Destruction. The text of the nearly 1,000 page report can be found at <http://news.findlaw.com/hdocs/docs/iraq/cia93004wmdrpt.html>

Status of U.N. Weapons Inspections and Restrictions

UNMOVIC remained in existence for several years after the fall of Saddam, continuing its research but without access to Iraq. The United States did not allow it or the IAEA a formal role in the post-conflict WMD search in Iraq, even though both bodies said they would have liked to assume a post-war role to formally complete the U.N. disarmament work in Iraq begun in 1991. Blix retired from UNMOVIC on June 30, 2003, and later criticized the United States for being impatient about his mission and, in his view, failing to weight intelligence information that contradicted the prevailing U.S. judgment on Iraq's WMD. UNMOVIC's work was formally terminated by U.N. Security Council Resolution 1762 (June 29, 2007). However, the restrictions of Resolution 687 banning Iraq from acquiring or producing WMD remain in effect. U.N. Resolution 1546 (June 8, 2004) lifted the restriction on the importation by the Iraqi government of conventional weaponry.

Post-War Fallout/Investigations

The early ISG findings, coupled with the apparent discrepancy between pre-war assertions and on-the-ground WMD findings, prompted a number of inquiries. Shortly after the fall of Saddam Hussein, then CIA Director George Tenet said the CIA had begun to compare its pre-war intelligence to actual on-the-ground WMD findings on WMD to determine the quality of the pre-war assessments. The U.S. intelligence community's assessment of Iraq's pre-war WMD was outlined in an October 2002 white paper entitled *Iraq's Weapons of Mass Destruction Programs* (referred to below as "the CIA white paper"), which was based on a classified National Intelligence Estimate (NIE).

There have been six inquiries and/or research efforts into pre-war intelligence on Iraq, including the internal CIA inquiry and an inquiry (announced by the Bush Administration February 2, 2004) by a separate nine-member bipartisan commission to look into U.S. intelligence performance on Iraq, Iran, Libya, and North Korea. That commission, headed by former Senator Charles Robb and appeals court judge Laurence Silberman, has begun meeting and is to report its findings in March 2005. The congressional inquiries include the Senate Intelligence Committee, the Senate Armed Services Committee, and a majority and minority inquiry at the House Intelligence Committee. A report by the Senate Intelligence Committee, a product of that committee's inquiry, was released July 9, 2004. It was highly critical of the intelligence community's pre-war assessments,⁶ citing the community for misinterpreting ambiguous evidence to fit a pre-conceived presumption about Iraq's WMD ("group think," p. 18). The report said the Committee did not find evidence that Administration officials "pressured" CIA analysts to skew their judgments, and the report did not examine how senior policymakers portrayed or used the intelligence assessments. The report also asserted that the intelligence community suffered from a lack of sources close to the regime and relied too heavily on information from Iraqi exiles who had an interest in whether the United States took military action against Saddam Hussein.

Some senior officials, including Secretary of State Powell and then CIA Director George Tenet (in a speech given at Georgetown University, February 5, 2004, available online at http://www.cia.gov/cia/public_affairs/speeches), have cited information from the ISG's October 2003 interim report to assert that WMD programs were present in pre-war Iraq and that U.S. pre-

⁶ Report of the Select Committee on Intelligence on the U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq. July 9, 2004.

war intelligence was not necessarily completely wide of the mark. A late October 2003 press report quoted General James Clapper, head of the National Imagery and Mapping Agency, as expressing his own view that Iraq might have moved some WMD materiel to Syria prior to the March 2003 start of the war, although no other U.S. officials have presented evidence to credit that theory.⁷ Some believe that the few chemical munitions found in Iraq since May 2004, discussed further below, might yet demonstrate that Iraq had more substantial WMD stockpiles, although the Duelfer report casts doubt on that possibility.

The failure to find substantial WMD in Iraq has led to renewed debate over the justification for the 2003 invasion. Secretary of State Powell told journalists on February 2, 2004, that he does not know whether he would have recommended invasion of Iraq had he known what he now knows about the state of Iraq's WMD programs,⁸ and he has since pressed the CIA to account for why the information given him for his February 5, 2003 U.N. presentation has proved wide of the mark. Most other senior officials, including the President, say that the Duelfer reports findings that Saddam retained intentions to restart WMD programs provides justification for the war.

The following summarizes outstanding issues on Iraq's WMD, U.S. assessments, and U.S. post-war findings.

Nuclear Program

From 1992-2003, successive Administrations asserted that Iraq retained the expertise (about 7,000 scientists and engineers) and intention to rebuild its nuclear program. The "CIA white paper" said that Iraq "if left unchecked, probably will have a nuclear weapon during this decade." The white paper pointed to Iraq's efforts to procure aluminum tubes that could be used in a nuclear weapons program. IAEA chief Mohammad Baradei said March 7, 2003, that the IAEA believed the tubes were for use in conventional rocket programs, although their importation was not legal under the international sanctions regime. Then CIA director Tenet asserted in February 2004 that the issue of aluminum tube procurement is still open, because the tubes found thus far do not match precise Iraqi specifications. Another allegation, contained in President Bush's January 2003 State of the Union speech but not in the white paper, said Iraq had tried to buy large quantities of uranium from Africa (Niger), but the IAEA said in a March 2003 report that documents alleging this procurement of uranium from Niger were "not authentic." The White House stated in July 2003 that the allegation should not have been included in the State of the Union speech because of CIA doubts about that information, although some British officials maintain that the allegation may still be valid. The IAEA said on January 27, 2003, that it had found no evidence Iraq had restarted a nuclear program, repeating this on March 7, 2003.

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 efforts to develop a radiological weapon ("dirty bomb"), which could scatter nuclear material. UNSCOM removed from Iraq all

⁷ Jehl, Douglas. "Iraqis Removed Arms Material, U.S. Aide Says." *New York Times*, Oct. 29, 2003.

⁸ Kessler, Glenn. "Powell: Arms Doubts Might Have Affected View on War." *Washington Post*, Feb. 3, 2004.

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 its crash program had succeeded, Iraq estimated it might have been able to assemble a nuclear explosive device 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 had in each of the past three years, IAEA inspectors verified that several tons of uranium remained sealed, acting under Iraq's commitments under the 1968 Nuclear Non-Proliferation Treaty.

Post-War/Duelfer Report Findings

The September 30, 2004, Duelfer report largely reiterated but also expanded on early findings released by the ISG. The Duelfer report said the ISG had "discovered further evidence of the maturity and significance of the pre-1991 Iraqi nuclear program but found that Iraq's ability to reconstitute a nuclear weapons program progressively decayed after that date ..." and that the ISG "found no evidence to suggest concerted efforts to restart the program." The report adds that "the ISG found a limited number of post-1995 activities that would have aided the reconstitution of the nuclear weapons program once sanctions were lifted." The report referred specifically to regime efforts to retain nuclear scientific talent in their jobs. There were some unconfirmed press reports in October 2004 that equipment from Iraq's nuclear sites was looted after the fall of the regime, raising questions about whether or not U.S. forces had properly secured the sites as the regime fell in April 2003.

Chemical Weapons

During its 1991-1998 tenure, 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; the destruction operation formally ended on June 14, 1994. In February 1998 UNSCOM discovered that shells taken from Iraq in 1996 contained 97% pure mustard gas, indicating it was freshly produced. However, the fate of about 31,600 chemical shells and 550 mustard gas bombs remains unknown. UNSCOM's main outstanding chemical weapons questions centered on VX nerve agent, which Iraq did not include in its initial 1991 declarations and of which no stockpile was ever located. Iraq did not prove 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. In March 2003, Iraq proposed a technical method to prove its assertions that it destroyed its VX in 1991. About 170

chemical sites were under monitoring. Iraq did not sign the Chemical Weapons Convention effective April 29, 1997.

The October 2002 CIA estimate said Iraq “is expanding its infrastructure, under cover of civilian industries, that it could use to advance its chemical weapons agent production capability,” and that the totality of evidence “strongly suggest that Iraq maintains a stockpile of chemical agents, probably VX, sarin, cyclosarin, and mustard.” A British assessment, released September 2002, said Iraq had distributed chemical weapons to its field units and could deploy chemical weapons on 45 minutes’ notice.

In January 2003, during the pre-war round of U.N. inspections, UNMOVIC found 16 chemical artillery munitions, believed empty. Iraq included an Iraqi Air Force document in its December 7, 2002, declaration that indicated that 6,500 chemical bombs were unaccounted for (13,000 bombs the document says were used versus 19,500 bombs Iraq previously said were used). An UNMOVIC workplan, submitted March 7, 2003, said UNMOVIC had found in Iraq previously undeclared cluster munitions that could deliver chemical or biological agents.

Post-War/Duelfer Report Findings

Within weeks of beginning their searches of post-Saddam Iraq, U.S. teams found chemical weapons protection gear and antidote vaccinations (atropine), but no chemical weapons stockpiles or precursor materials were found, casting substantial doubt on the British assertion that chemical weapons had been distributed to field units. In May 2004, insurgents attempted to detonate munitions against U.S. forces, munitions that were subsequently determined to contain sarin nerve agent and mustard gas. At least a dozen additional shells containing chemical weapons were discovered in June and July 2004 by Polish troops. Some of the shells contained cyclosarin, a nerve agent far stronger than sarin. The origin of the munitions is not known, but they are believed by many experts to be left over shells from the Iran-Iraq war or other munitions not discovered by 1991-2003 U.N. arms inspections. U.S. officials continue to be concerned that Iraq’s insurgents are seeking chemical munitions left in Iraq and technical assistance from Iraqi technicians who were involved in Iraq’s chemical weapons programs.⁹

The Duelfer report noted the finding of a small number of “old, abandoned chemical munitions” but added that the “ISG judges that Iraq unilaterally destroyed its undeclared chemical weapons stockpile in 1991 ... ” and that “There are no credible indications that Baghdad resumed production of chemical munitions thereafter, a policy ISG attributes to Baghdad’s desire to see sanctions lifted, or rendered ineffectual, or its fear of force against it should WMD be discovered.” The report added that Iraq “conserved[d] the knowledge base needed to restart a CW (chemical weapons) program, conduct a modest amount of dual-use research, and partially recover from the decline of its production capability caused by the effects of the [1991] Gulf war and U.N.-sponsored destruction and sanctions.” According to the report, “Iraq’s historical ability to implement simple solutions to weaponization challenges allowed Iraq to retain the capability to weaponize CW agent when the need arose.”

⁹ Gertz, Bill. “Iraqi Insurgents Seek Saddam’s Chemical Arms.” *Washington Times*, June 25, 2004.

Biological Weapons

According to UNSCOM, there were more unresolved questions about Iraq's biological weapons than about any other WMD category. UNSCOM said it considered Iraq's biological declarations during 1991-1998 neither credible nor verifiable. 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. 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.

The October 2002 CIA white paper said that "all key aspects—research and development, production, and weaponization—of Iraq's offensive biological weapons program were active and that most elements are larger and more advanced than they were before the Gulf war. The white paper added that Iraq was developing unmanned aerial vehicles that probably could be used to deliver biological weapons.

Very little new was apparently included in Iraq's December 7, 2002, WMD declaration provided to UNMOVIC. During the pre-war round of U.N. inspections, in February 2003, Iraq dug up, under UNMOVIC's supervision, fragments of more than 100 R-400 biological bombs (anthrax, botulinum, and aflatoxin) destroyed in 1991 and declared in August 1995.

Post-War/Duelfer Report Findings

As noted above, the CIA published an assessment in June 2003 that two trailers discovered in Iraq in April 2003 were those purported biological labs, although no biological agents were found in them. Kay said in January 2004 that the trailers were likely used to produce hydrogen gas or possibly rocket fuel, but CIA Director Tenet said in his Georgetown speech that more study is needed.

According to the Duelfer report, the "ISG judges that in 1991 and 1992, Iraq appears to have destroyed its undeclared stocks of BW (biological weapons) and probably destroyed remaining holdings of bulk BW agent." However, ISG lacks evidence to document complete destruction." The report adds that the "ISG judges that Iraq's actions between 1991 and 1996 demonstrate that the state intended to preserve its BW capability ..." but that the "ISG found no direct evidence that Iraq, after 1996, had plans for a new BW program or was conducting BW-specific work for military purposes." The ISG also found a network of labs and safehouses, run by Iraq's intelligence services, containing biological-capable equipment.

On the specific issue of the alleged trailer BW production vehicles, the Duelfer report says that "In spite of exhaustive investigation, the ISG found no evidence that Iraq possessed, or was

developing BW agent production systems mounted on road vehicles or railway wagons.” The report adds that the ISG judges that the two trailers found were “almost certainly designed and built ... exclusively for the generation of hydrogen.”

Ballistic Missiles/UAV's

Resolution 687 required the destruction of all Iraqi ballistic missiles with a range greater than 150 km. After seven years of inspections, UNSCOM accounted for 817 of 819 Soviet-supplied Scud missiles (300 km range), 130 of which survived the Gulf war, as well as all 14 declared mobile launchers and 60 fixed launch pads. During the 1990s, U.S. analysts believed Iraq might have been concealing as many as 12 Scud-like missiles and that it was manufacturing propellants for missiles of ranges longer than those allowed. There was also evidence of 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'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 included missile program documentation, 300 tons of special propellant, and indigenous production (30 warheads and 7 missiles).

Iraq was developing permitted-range missiles—the Ababil and Samoud programs and, prior to Operation Desert Fox, UNSCOM had been monitoring about 63 missile sites and 159 items of equipment, as well as 2,000 permitted missiles. The October 2002 CIA white paper said that Iraq “has developed a ballistic missile capability that exceeds the 150 km range limitation established by U.N. Security Council Resolution 687.” Iraq's December 7, 2002 declaration said some flight tests of these missiles did exceed the allowed range by about 50 km, and Blix ordered the destruction of the Al Samoud (about 120 missiles) and related production equipment. Iraq began the destruction by the deadline of March 1, 2003, and about half of the missile force was destroyed by the time the war started. Iraq's “Fatah” program was being studied to see if its range exceeded allowed limits. Some of these missiles were fired by Iraq into Kuwait during the 2003 war, although there were no confirmed firings of Scud-range missiles, which were banned under Resolution 687. Most Iraqi missiles fired were intercepted by U.S. or Kuwaiti Patriot systems.

Post-War/Duelfer Report Findings

According to the Duelfer report, “Desert Storm and subsequent U.N. resolutions and inspections brought many of Iraq's delivery programs to a halt ...” and that “The ISG has uncovered no evidence Iraq retained Scud-variant missiles, and debriefings of Iraqi officials in addition to some documentation suggest that Iraq did not retain such missiles after 1991.” The report adds that “The ISG assesses that Saddam clearly intended to reconstitute long-range delivery systems and that the systems potentially were for WMD.” According to the report, Iraq did develop the Al Samoud and Fatah missiles, discussed above, “and was pursuing a series of new small UAV systems. The report adds that the “ISG uncovered Iraqi plans or designs for three long-range

ballistic missiles with ranges from 400 to 1,000 km and for a 1,000 km range cruise missile, although none of these systems progressed to production and only one reportedly passed the design phase.” The report added that the ISG found evidence that Russian experts helped Iraq develop the Al Samoud and that Iraq imported missile-related equipment from Belarus, Poland, Russia, and Serbia.

Human Rights/War Crimes Issues

Resolution 688 (April 5, 1991) requires Iraq to cease repressing its own people. Iraq now has a different regime than the one addressed by this Resolution (which was not technically a “Chapter 7” resolution), and it is not clear whether this Resolution still applies.

U.S. and U.N. human rights reports after the 1991 Gulf war repeatedly described Saddam Hussein’s regime as a gross violator of human rights. International organizations estimate that more than 400,000 Iraqis were killed by regime security forces during Saddam’s rule, but some estimates are as high as 1 million. 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. Then U.N. Rapporteur for Iraq Max Van der Stoep’s February 1994 report said that Convention might have been 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, sensing the United States was trying to build a case to oust him from power militarily, Saddam Hussein granted an amnesty and released virtually all prisoners in Iraq. He called the move gratitude for his purported “100%” victory in a referendum (no opponent) on his leadership on October 15, 2002. Some in the Bush Administration have blamed some of the post-war unrest in Iraq on criminals released by Saddam during this amnesty.

U.S. State Department documents also discuss reports of women who were raped by Iraqi personnel while in custody, in an effort to extract information and force confessions from their family members.¹⁰ Some human rights groups, such as Amnesty International, have reported that the former regime beheaded over 200 women accused of prostitution. Detainees, both male or female, were routinely and systematically tortured, including by electric shock and burnings, according to Administration documents. U.S. and other accounts say the former regime conducted a decades-long campaign of murder, execution, and arrest of Shiite religious leaders, and that the families of supporters of Shiite Islamic political parties were often denied food ration cards. Shiite religious commemorations, broadcasts, and publications were banned. It was widely alleged that Saddam’s elder son, Uday, who served as a sports official, threatened or beat athletes following soccer game defeats and that he dismissed hundreds of members of the Iraqi Union of Journalists for not praising the regime sufficiently.

Post-War Findings

At least 270 mass graves have been reported by Iraqis and U.S. investigators since the fall of the regime, but about 50 were confirmed by Iraq’s Human Rights Ministry. Most of the mass graves

¹⁰ Department of State. Office of Women’s Issues. *Iraqi Women Under Saddam’s Regime: A Population Silenced*. Mar. 20, 2003.

are believed to contain the bodies of Shiite Muslims killed in the post-1991 war uprisings against Saddam Hussein. Some of the mass graves are located in al-Mahawil, a small town outside the city of al-Hilla, about 60 miles south of Baghdad. In October 2004, nine mass graves were discovered at Hatra, in Kurdish-inhabited northern Iraq, containing several hundred bodies, including those of women and children. The victims are believed to be Kurds killed during the Anfal campaign of 1987-1988, a forced displacement of Kurds from their villages.

An FY2004 supplemental appropriation (P.L. 108-106) contained funding for several human rights-related functions, but particularly investigations into the human rights practices of the former regime. From the over \$18.4 billion in reconstruction funds appropriated by the supplemental, \$75 million was allocated specifically for investigations of former regime crimes against humanity, a function that includes the trial of Saddam Hussein and his associates (discussed below). An additional \$15 million was allocated for the establishment of a human rights commission (provided for in Iraq's transitional administrative law, or provisional constitution signed in March 2004) and to assist the operations of the Ministry of Human Rights, which was headed by Bakhtiar Amin. Other activities funded by the \$15 million are forensic training and a project to record information on human rights violations by the former regime in preparation for the creation of a "Truth Commission."

War Crimes Issues

An issue related to regime change but somewhat separate is the trial of Saddam Hussein and his associates on charges of war crimes and crimes against humanity. During the 1990s, the war crimes issue was addressed by previous U.S. administrations and the international community. 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 (see ILA above).

A U.S. Army report on possible war crimes was released on March 19, 1993, after Clinton took office. In August 2000, the Clinton Administration'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 included the use of chemical weapons—sarin and tabun—against Kurdish civilians at Halabja (March 16, 1988, killing 5,000 Kurds); 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-1991 crimes against humanity (suppression of uprisings by the Kurds and the Marsh Arabs after that war); war crimes against Kuwait (including oil field fires) and coalition forces during the 1991 war; 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.

In the year prior to the 2003 war, the Administration was gathering data for a potential trial of Saddam and 12 of his associates. Those it had sought for trial include Saddam; his two sons Uday and Qusay (killed after discovery by and a firefight with U.S. forces in Mosul on July 22, 2003); Ali Hassan al-Majid, for alleged use of chemicals against the Kurds (captured August 21, 2003); Muhammad Hamza al-Zubaydi (surrendered in mid-April 2003); Taha Yasin Ramadan; first Vice

President and number three in the regime (captured August 19, 2003); Izzat Ibrahim, Vice Chairman of the Revolutionary Command Council and formally number two in the regime (still at large); Barzan al-Tikriti, Saddam's half brother (captured in mid-April 2003); Watban al-Tikriti (captured in April 2003) and Sabawi al-Tikriti, both other half brothers of Saddam and former leaders of regime intelligence bureaus; Tariq Aziz, deputy Prime Minister and foremost regime spokesman (surrendered in May 2003); and Aziz Salih Noman, governor of Kuwait during Iraq's occupation of that country (captured May 2003). Others not on the list of twelve, but part of a list of 55 former regime officials sought by the United States for questioning and possible arrest, have been captured or surrendered. As of August 2004, 45 of the Iraqis on the list of 55 are now in custody or were killed.

On July 15, 2003, the "Governing Council" of 25 Iraqis that was appointed by the U.S.-led Coalition Provisional Authority decided to form a war crimes tribunal for former regime members including Saddam Hussein. The legal process for those in custody began after the June 28, 2004, handover of sovereignty to Iraq. Twelve of the most senior captives, including Saddam, were formally charged with crimes against humanity on July 1, 2004. Saddam was captured on December 13, 2003, in the town of Dur, nine miles south of his hometown, Tikrit. Saddam, who had been hiding in a tiny cellar on a farm with \$750,000 and a pistol, surrendered to U.S. forces. He was held at a U.S.-controlled facility near the Baghdad international airport (Camp Cropper) and was interrogated. According to U.S. commanders in Baghdad, documents captured with Saddam have led to the arrests of several former officials.

At his arraignment hearing on July 1, 2004, Saddam was charged with major crimes against the Iraqi people and humanity, some of which are the same as those alleged crimes that the United States had researched previously. The charges against Saddam included (1) invading Kuwait; (2) killing Iraqi religious persons in 1974; (3) using chemical weapons against the Kurds at Halabjah; (4) killing members of the Kurdish Barzani clan in 1983; (5) killing members of various "political parties" over the last 30 years; (6) the "Anfal campaign" discussed above; and (7) willful killing of Shiites in the 1982 assassination attempt against Saddam in the village of Dujail in 1982; and (8) the suppression of the 1991 uprisings by the Shiites and the Kurds. Saddam remained in physical custody of U.S. forces in a prison near Baghdad International Airport, spending his time reading, writing, and tending a small garden, according to press reports.¹¹ On November 5, 2006, was convicted for the Dujail killings and was hanged by the Iraqi government on December 30, 2006. That government, elected in December 2005 and formed subsequently in May 2006, was dominated by Shiite Islamists who were the main victims of Saddam's repression.

Support for International Terrorism

Resolution 687 required Iraq to end support for international terrorism, and Iraq made a declaration that it would do so in 1991. Despite that declaration, some known terrorists lived in Iraq up until the time of the 2003 war. Palestine Liberation Front leader Abu Abbas, whose organization committed the 1985 hijacking of the cruise ship Achille Lauro, was arrested by U.S. forces in Iraq on April 15, 2003, during the war. He died in U.S. custody, apparently of natural causes, in early March 2004. In August 2002 aging terrorist organization leader Abu Nidal died (committed suicide or was killed) as Iraqi police went to arrest him for alleged contacts with foreign governments opposed to Baghdad. During 2000 - 2003, Iraq was paying the families of

¹¹ Mcallester, Matthew. "Quiet Life for Saddam." *Newsday*, July 26, 2004.

Palestinian suicide bombers \$25,000, and Iraq reportedly invited Arab volunteers to fight against the United States in the course of Operation Iraqi Freedom.

Post-War Status

The former regime's pre-war ties to Al Qaeda have been a subject of debate within the Bush Administration and among outside experts. Little evidence has come to light since major combat ended that linked the Saddam regime to Al Qaeda, and several post-war reports, including the final report of the 9/11 Commission, have found no evidence of an operational linkage between Saddam's regime and Al Qaeda. However, U.S. commanders in Iraq believe that foreign fighters, possibly linked to or supportive of the ideology of Al Qaeda, are participating in the insurgency against U.S. forces in Iraq. Iraq was removed from the U.S. list of state sponsors of terrorism on September 17, 2004. For information on the former regime's alleged ties to Al Qaeda, see CRS Report RL32217, *Al Qaeda in Iraq: Assessment and Outside Links*.

Iraq-Kuwait Issues

Resolution 1284 required reports on the issues discussed below but, unlike Resolution 687, did not link the easing of any sanctions to Iraqi compliance on Kuwait-related issues. Resolution 1441 did not impose any new Kuwait-related requirements on Iraq. It is on these issues that the current Iraqi government most wants to achieve closure, in large part to end the financial deductions to pay the compensation to Kuwait discussed below.

The United States, most recently during the July 2009 visit of Prime Minister Maliki, has reiterated the thrust of Article 25 of the U.S.-Iraq Security Agreement, requiring the United States to try to help Iraq close out Chapter 7 resolutions. However, the United States also is allied with Kuwait, which wants the relevant issues completely cleared up before the Chapter 7 files are closed out. The and the United States has not firmly sided with Iraq that the applicable U.N. resolutions be closed before the inherent provisions have been completely resolved. A U.N. Secretary General report on what is needed to close these Resolutions, required by Paragraph 5 of U.N. Security Council Resolution 1859 (December 22, 2008), is due later in 2009.

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 (abolished after the 2003 war) 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 on 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). On December 7, 2002, Saddam Hussein issued an “apology” to Kuwait for the invasion, but Kuwait rejected it as insincere.

Until it ended operations just after the launch of Operation Iraqi Freedom, the 32-nation U.N. Iraq-Kuwait Observer Mission (UNIKOM), established by Resolutions 687 and 689 April 9, 1991, monitored border violations. The United States contributed 11 personnel to the mission, which was 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 supplemented the 197 observers. Kuwait furnished two-thirds of UNIKOM’s \$51 million annual budget. The United States contributed about \$4.5 million per year to UNIKOM.

Current Status

Resolution 1490 set a date of October 6, 2003 for the disbanding of UNIKOM and the termination of the demilitarized zone.

However, contention remains over border pillars. Between 1991 and 1994, 106 boundary pillars and 28 border markers were put in place. The Demarcation Commission recommended annual inspections of the pillars and that Iraq and Kuwait share the maintenance costs. The U.N. Secretary-General proposed that maintenance be administered through a joint Iraqi-Kuwaiti trust fund. The U.N. Department of Peacekeeping Operations (DPKO) took over maintenance of the pillars from UNIKOM in March 2003, with a January 15, 2008 deadline for turnover to Iraq and Kuwait. However, a small Iraqi building which protruded into Kuwait territory and road construction parallel to the pillars on the Iraqi side delayed the transition. The Iraqi government has approved an alternative transition schedule of September 2009, has removed the building, and has begun work on the road, but maintains that it has fulfilled its financial obligations towards the maintenance trust fund.

Kuwaiti Detainees and Property

Security Council **Resolutions 686** and **687** required Iraq to account for Kuwaiti and other nationals detained in Iraq during the Persian Gulf crisis. After that 1991 war, 605 Kuwaitis and other country nationals were missing. After January 1995, Iraq and Kuwait had met monthly on the Iraq-Kuwait border, along with U.S., British, French, and Saudi representatives, but Iraq boycotted the meetings after 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 Kuwait-related issues. The Saddam regime did not allow him to visit Iraq, and the U.N. Security Council issued several statements of concern about the lack of progress. On December 12, 2002, Iraq invited Vorontsov to visit, but no visit occurred. In January 2003, in an attempt to appear cooperative and thereby head off the U.S. invasion, Saddam regime representatives held a few meetings with Kuwait and Saudi Arabia on the issue, pledging to bring forward new information on the fate of the missing, but no outstanding cases were resolved. Resolution 1483, adopted on May 22, 2003, just after the fall of Saddam Hussein, directed Vorontsov to attempt to clear up the issue of missing Kuwaitis and Kuwait property.

U.N. Security Council **Resolutions 686** and **687** required Iraq to return all property seized from Kuwait, including the Kuwaiti national archives. 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 U.N. reports and statements in June 2000 noted that Iraq had returned “a substantial amount of property.” However, in 1994, U.S. officials 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 said Saddam Hussein’s Iraq did not return 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 claimed the materiel was left behind or destroyed when Iraq evacuated Kuwait. In July 2002, an agreement was reached on a “mechanism” for Iraq to return Kuwait’s state archives (six truckloads of documents) to Kuwait. Saddam’s regime began the return of tons of documents on October 20, 2002, although Kuwait said key archives were not returned. Iraq returned some additional property in early February 2003, in part to try to head off the U.S. invasion by appearing cooperative.

Post-2003 War Findings and Current Status

In July 2004, Iraq and Kuwait restored diplomatic relations during a visit to Kuwait by interim Iraqi Prime Minister Iyad al-Allawi. Kuwait has since appointed an Ambassador in Iraq. Through a Humanitarian Operations Center, Kuwait has provided substantial humanitarian aid to Iraqis, primarily in the Shiite south, as part of the reconciliation process and as an attempt by Kuwait to promote stability in Iraq.¹²

On April 24, 2008, Ambassador Gennady Tarasov of the Russian Federation replaced Yuli Vorontsov as High-level Coordinator. After five years of U.S. and ICRC-led searching, there remain 369 missing Kuwaiti and third-country nationals (out of a total of 605). They were mostly found in graves just north of Kuwait’s border with Iraq.¹³ Since April 2008, only one additional person had been identified (bringing the total number of remains identified to 236). To close the files of the 369 missing persons, the remains would need to be found, exhumed, transported, and identified. This task will be difficult considering that 20 years have passed and the Iraqi Ministry of Human Rights responsible for the job lacks sufficient capacity. Kuwaiti teams have been unable to carry out exhumation work at burial sites in Iraq due to the unsafe security situation. On the case of missing (1991) Gulf war U.S. Navy pilot Michael Speicher, U.S. investigators reportedly have determined that he is dead, but his remains have not been found to date.¹⁴

The Kuwaiti national archives are still missing and no credible information on their whereabouts exists. A January 21, 2009 request from Tarasov to 12 Governments and the Secretaries General of the GCC, League of Arab States, and OIC provided no information. In April 2009, the Security Council indicated limited progress on human remains and the return of Kuwaiti property, but welcomed the return by the Iraqi Government of audio and video tape recordings of the Kuwaiti Ministry of Information and positive efforts on the return of Kuwaiti Airways spare parts. The

¹² For information on Kuwait’s assistance to U.S. operations and to stability in Iraq, see CRS Report RS21513, *Kuwait: Security, Reform, and U.S. Policy*.

¹³ Information provided by Embassy of Kuwait in Washington D.C., Mar. 15, 2004.

¹⁴ Scarborough, Rowan. “U.S. Team Concludes Navy Pilot Died in Gulf War.” *Washington Times*, July 22, 2004.

Security Council also welcomed positive intentions from Iraq and Kuwait regarding confidence-building measures and extended the funding for the High-level Coordinator for another six months. The Iraq-Kuwait issue remains a sensitive one for the Security Council.

Reparations Payments

Reparation payments are another legacy of the former regime resulting from the 1991 Gulf war – and perhaps at the heart of Iraqi initiatives to end the Chapter 7 process. After that war, the U.N. Security Council 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. That figure was reduced to 5% of Iraq’s revenues by Resolution 1483 of May 22, 2003. At current rates of oil exports and at current prices, about \$800 million was deducted from Iraqi oil earnings in the first half of 2009 to fund the reparations process. This is a substantial sum of money that Iraq says is needed to continue to improve security and recover from nearly 30 years of constant warfare.

In its seventeen years of operations to date, the U.N. Compensation Commission (UNCC) awarded approximately \$52.4 billion as compensation. As of July 2009 approximately \$27.6 billion worth of compensation payments had been paid and \$24.8 billion in unpaid awards remained. That is approximately the amount that Kuwait says its firms are still owed from UNCC awards made to date. Awards to U.S. claimants thus far total over \$700 million, of which \$552 million has been paid. Of the amounts awarded, over \$600 million has been to U.S. companies and \$13 million to the U.S. government for damage to the U.S. Embassy in Kuwait and other claims.¹⁵

The Iraqi Foreign Minister indicated in March 2009 that the Iraqi position on compensation is to annul all remaining claims (and end the 5% revenue deductions) because Iraq has paid a high proportion of the compensation claims during the years between the second Gulf War and present day. Kuwait has adamantly opposed ending the process. Iraq subsequently has floated compromise proposals to reduce the deduction to 2.5% or even 1% to continue the reparations process but at a slower pace, but Kuwait has not agreed, to date. While Council members are sympathetic to Kuwait’s position on the matter, the UNCC Governing Council in 2004 and 2006 recommended the need for a principled phase-out strategy.

The UNCC’s main ongoing activities include paying out successful claims and overseeing the Follow-up Programme for Environmental Awards (established in December 2005 to monitor the technical and financial implementation of \$4.3 billion in environmental remediation and restoration projects). In January 2009, \$460 million was made available to two governments for distribution to twelve claimants; and in April and July 2009, a total of \$730 million was given to the government of Kuwait for distribution to ten claimants. Payments to individuals of all nationalities have been completed. The next regular session of the Governing Council is scheduled for November, 2009.

Several legislative proposals (“Iraq Claims Act”) to distribute Iraq’s frozen assets (about \$2.4 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. On March 20, 2003, President Bush issued an executive order for the U.S. government to confiscate

¹⁵ Information provided by the U.S. State Department. Oct. 9, 2003.

approximately \$2.4 billion in frozen Iraqi assets, for use in post-war reconstruction. (See CRS Report 98-240, *Iraq: Compensation and Assets Issues*.)

Controls Over Iraq's Funds

Resolution 1483 (2003) formally ended the U.N. embargo on trade with Iraq that was set up in Resolution 661. However, Iraq's funds remained somewhat encumbered. Resolution 1483 directed that all export sales of petroleum, petroleum products, and natural gas be deposited (net of the 5% deduction for compensation, discussed above) into a Development Fund for Iraq (DFI) until an internationally-recognized, representative government is constituted. It also directed that all assets of the previous regime be frozen and transferred into the Fund. Resolution 1483 directed that the DFI be audited by an International Advisory and Monitoring Board (IAMB). These processes were reaffirmed by Resolution **1546**. Successive resolutions, most recently **Resolution 1859** (December 22, 2008), extended the depositing and IAMB monitoring arrangements until the end of 2009.

Although the U.N. "Sanctions Committee" (or "661 Committee") that oversaw implementation of Saddam-era U.N. sanctions was abolished by Resolution 1483, **Resolution 1518** (November 24, 2003) established a "1518 Committee" to take over the 661 Committee's work to identify individuals with funds, assets, or economic resources belonging to the Saddam Hussein regime in order to transfer these resources to the DFI.

The Iraqi government has also, in accordance with Resolution 1483, closed out the Saddam-era "oil for food program." During the 1990s, as international concerns for the plight of the Iraqi people grew, the United States had increasing difficulty maintaining support for international sanctions. The oil-for-food program, established by **Resolution 986** (April 15, 1995) and in operation since December 1996, was progressively modified to improve Iraq's living standards, and the United States eased its own sanctions to align them with the program. The operations of the program ended November 22, 2003, as mandated by Resolution 1483, but **Resolution 1546** (2004) empowered the Iraqi government to wind down residual contracts under the program. (See CRS Report RL30472, *Iraq: Oil-For-Food Program, Illicit Trade, and Investigations*.)

U.N. Operations in Post-Saddam Iraq

Several U.N. resolutions assign a role for the United Nations in post-Saddam reconstruction and governance. Resolution 1483 (cited above) provided for a U.N. special representative to Iraq, and "called on" governments to contribute forces for stabilization. Resolution 1500 (August 14, 2003) established U.N. Assistance Mission for Iraq (UNAMI), the mandate of which has been regularly extended since. Iraqi leaders do not criticize UNAMI's humanitarian coordinating and other work, per se. However, UNAMI represents the continuing U.N. role in Iraq and many of the most nationalistic Iraqi factions believe that Iraq can and should manage all of its own affairs without U.N. interference.

U.S. Military Deployments in Iraq

From the end of the 1991 war until the 2003 war, U.S. military deployments in the Gulf region, approximately 20,000 personnel, focused on containing Iraq. Numbers of personnel sometimes increased at times of crisis with Saddam's regime primarily over U.N. WMD inspections. The

United States and Britain enforced two “no fly zones” to protect Iraq’s Kurdish minority (Operation Northern Watch, ONW) and its Shiite population (Operation Southern Watch, OSW), as well as to monitor Iraqi forces. France was originally a part of the enforcement operations but dropped out in 1997 and 1998 due to opposition to what it considered an overly punitive policy toward Saddam Hussein’s regime. ONW, established in April 1991, extended north of the 36th parallel. Turkey provided basing rights at Incirlik Air Base for the 24 American aircraft and about 1,300 U.S. forces (plus allied forces) that policed the northern zone. However, Turkey feared that ONW protected the anti-Turkish Kurdistan Workers’ Party (PKK), which takes refuge in parts of northern Iraq, and Turkey made repeated attacks against the PKK after May 1997. OSW, established on August 26, 1992 to protect the Shiites, extended south of the 32nd parallel. The United States and the United Kingdom expanded that zone to the 33rd parallel on September 4, 1996, after Baghdad’s move into northern Iraq.

To enforce the no-fly zones, the two allies invoked U.N. Resolution 678 (November 29, 1990, authorizing use of force to expel Iraq from Kuwait), 687 (the main ceasefire resolution), 688 (human rights), the Safwan Accords (the March 3, 1991 cease-fire agreements between Iraq and the coalition forces that banned Iraqi interference with allied air operations), and P.L. 102-1 of January 12, 1991, the congressional resolution authorizing U.S. military action to expel Iraq from Kuwait after its 1990 invasion. Resolutions 678 and 687 were written under Chapter VII of the U.N. Charter (peace and security issues)—interpreted as allowing military action for enforcement. Resolution 688 was not written under Chapter VII; neither that or any other resolution specifically established no fly zones. 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 interpreted this as authorizing military action if Iraq enhanced (numbers or quality of armament) its forces below the 32nd parallel, including any movement of air defense equipment into the zones.

The several years prior to the 2003 war were characterized by occasional U.S. strikes on Iraqi military emplacements. During March 2000-March 2001, Iraqi air defenses fired at or targeted 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 parts of that network north of the southern no fly zone, although the striking 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. During the run-up to the war, the target list was expanded to include systems, such as surface-to-surface missiles, that could be used against U.S. forces.

Post-War Redeployments and Residual Military Issues

With Saddam Hussein’s regime overthrown, U.S. officials said in mid-April 2003 that no fly zone enforcement had ended and many of the U.S. aircraft involved in those operations have now been redeployed. The Defense Department announced in September 2003 that the United States has drawn down its personnel in Saudi Arabia, estimated at about 6,000 before the war, to the few hundred that were there prior to the 1990 invasion of Kuwait. Those forces had been a source of some strain in light of the resentment of Saudi citizens to the presence of non-Muslim forces in the Kingdom. Many of those forces were redeployed to a new U.S. air command center in Qatar. For more information on the U.S. military posture in the Gulf, see CRS Report RL31533, *The Persian Gulf States: Issues for U.S. Policy, 2006*.

In the post-Saddam period, U.S. military teams secured Iraq’s conventional military infrastructure, including an estimated 130 ammunition storage sites in Iraq, some of which

exceeded 50 square miles in size and hold more than 600,000 tons of artillery shells, rockets, bombs, and other explosive ordnance. Some of these sites were not secured immediately after the regime fell and some remain unsecured, leading to speculation that the Iraqi resistance obtains its explosives from these sites.¹⁶ There is also uncertainty as to the location, and even the total number, of all such storage sites. In Anbar Province, which contains the restive Sunni Muslim cities of Fallujah and Ramadi, there are 103 known former regime ammunition storage sites, of which 35 have been declared completely clear of both unexploded munitions and captured ammunition, as of July 2004.¹⁷

U.S. forces reportedly did not locate a large number of shoulder-fired anti-aircraft missiles once part of Saddam Hussein's arsenals. U.S. forces did locate a number of combat aircraft buried under sand dunes by the former regime prior to the war; it is not known whether they might be made operational for a future Iraqi air force. Another unresolved issue is that of 22 combat aircraft Iraq flew to Iran at the beginning of the 1991 Gulf war, to protect them from U.S. air strikes in that war. Iraq's interim government is demanding that Iran return the planes.

As of July 2009, there are about 125,000 U.S. troops in Iraq helping Iraq maintain security, in accordance with the U.S.-Iraq Security Agreement. Virtually all non-U.S. forces have departed Iraq. Under the Obama Administration withdrawal plan announced February 2009, there are to be only about 35,000-50,000 U.S. forces in Iraq by August 2010, in advisory and support roles, and all U.S. troops are to leave by the end of 2011. However, there are concerns in U.S. command circles that Iraqi forces might still need advice and mentoring, as well as combat air support, after that time, according to numerous news accounts and public statements of U.S. and Iraqi officials.

Costs of Containment

From the end of the 1991 Gulf war until the start of the 2003 war, the Defense Department incurred about \$12 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 assisted UNSCOM by providing U-2 surveillance flights, intelligence, personnel, equipment, and logistical support, at a cost of about \$15 million per year.

¹⁶ Bergman, Lowell and Eric Schmitt. "Vast, Unsecured Iraqi Arms Depot Could Take Years to Dispose Of." *New York Times*, Sept. 30, 2003.

¹⁷ Marines, Soldiers Destroy Mountains of Munitions, Making Many Safer in Iraq. U.S. Fed News, July 28, 2004.

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Acknowledgments

This report was prepared with the assistance of Melissa Martz.

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