

United Nations Security Council Resolution 1441 (2002) on the decision to set up an enhanced inspection regime to ensure Iraq's compliance of its disarmament obligations, 8th November 2002 (UN Doc S/RES/1441 (2002)), OXIO 252

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Subject(s):

Weapons of mass destruction — Collective security — Disarmament — International peace and security — Use of force, prohibition

Core Issues

1. Whether United Nations Security Council Resolution 1441 (2002) constitutes a legal basis for the use of force against Iraq in March 2003.
2. How Resolution 1441 (2002) was implemented by Iraq and the weapons of mass destruction inspectors.

This headnote pertains to: United Nations Security Council Resolution 1441 (2002) on decision to set up an enhanced inspection regime to ensure Iraq's compliance of its disarmament obligations, an act of an international organization. [Jump to full text](#)

Background

The United Nations (UN) Security Council (SC) adopted Resolution 1441 (2002) on the decision to set up an enhanced inspection regime to ensure Iraq's compliance of its disarmament obligations ('Resolution 1441' or 'Resolution') and in doing so determined that Iraq remained in 'material breach' of its obligations set by the UN SC, and afforded Iraq a 'final opportunity' to comply with its disarmament obligations. Resolution 1441 could be considered one of the watershed documents in the history of the UN SC and international organizations, as the Resolution was interpreted in a contradictory manner by some of the permanent members of the SC at one of the most critical moments in international peace and security. While there is nothing novel in the idea that UN SC resolutions can be differently interpreted, Resolution 1441 was invoked by SC members for completely opposite political and military outcomes, and this has had lasting implications for the legitimacy of the SC and for the governments and leaders of certain Member States. Controversies surrounding the interpretation of Resolution 1441, and more broadly the legality of the use of force against Iraq, have led to public investigations into the governmental decision-making processes, notably in the Netherlands (Davids Report (2010)) and the United Kingdom (UK) (Chilcot Report (2016)).

The disarmament obligations of Iraq (which was then under the regime of President Saddam Hussein) date back to the 1990-1991 Gulf War. After Iraq was defeated, the UN SC adopted Resolution 687 (1991) setting out a series of terms and conditions for a ceasefire between Iraq and the Member States cooperating with the government of Kuwait. Resolution 687 obliged Iraq to unconditionally remove weapons of mass destruction (Resolution 687, paras 8, 10, 12). Resolution 687 also established the UN Special Commission (UNSCOM) in order to conduct on-site inspections in Iraq in cooperation with the International Atomic Energy Agency (IAEA) (Resolution 687, para 9(b)). In 1999, UNSCOM was replaced by the UN Monitoring, Verification and Inspection Commission (UNMOVIC) in order to enhance the independence of UN inspection (UN SC Resolution 1284 (1999), para 1). Hans Blix, former IAEA Director-General, was nominated as the Executive Chairman of UNMOVIC and worked with Mohamed ElBaradei who succeeded to the position of IAEA Director-General.

In early 2002, Iraq started signalling its intention to allow inspectors to return, in response to the indication of the United States (US) that it would not rule out military options against Iraq if it continued to resist the UN SC. On 12 September 2002, US President George Bush signalled, at the UN General Assembly, that the US would take further action against Iraq if it did not immediately and unconditionally fulfil its disarmament obligations. On 16 September 2002, Iraq agreed to unconditionally allow UN weapons inspectors back into the country. In the meantime, on 24 September 2002, the British government published a dossier which concluded that the Iraqi military were capable of deploying chemical and biological weapons within forty-five minutes and that Iraq continued to work on developing nuclear weapons (Iraq's Weapons of Mass Destruction: the Assessment of the British Government, Part One, Chapter 3).

On 8 November 2002, in the midst of political tension surrounding Iraq's alleged capability to

deploy the weapons of mass destruction, the UN SC, acting under Chapter VII of the Charter of the United Nations ('UN Charter'), adopted Resolution 1441. Resolution 1441 builds on informal draft texts prepared by the US and UK, France, and Russia, respectively. The drafts differed in terms of who would determine whether Iraq was in violation of SC resolutions, the consequences any breach might entail, and, more fundamentally, to what extent the situation of Iraq ought to be resolved through the UN's collective security mechanisms. After several weeks of intense diplomatic negotiations, on 7 November 2002 the US and UK tabled a formal resolution which was subsequently adopted (United Kingdom of Great Britain and Northern Ireland and United States of America: draft resolution on the decision to set up an enhanced inspection regime to ensure Iraq's compliance of its disarmament obligations ('US/UK Draft Resolution')). Although the UN SC members passed Resolution 1441 unanimously, the negotiations leading up to it did not significantly alter the positions held by key players, which may have contributed to the contradictory meanings assigned to the terms of UN SC Resolution 1441.

Summary

Having recalled previous UN SC resolutions regarding Iraq's disarmament—including Resolution 678 which authorized the use of all necessary means, and Resolution 687 which imposed a series of obligations on Iraq—the UNSC deplored the failure of Iraq to provide a complete disclosure of its weapons of mass destruction programmes and the failure of Iraq to cooperate with UNSCOM, the IAEA, and UNMOVIC. [ref 1 and ref 2] The UN SC further recalled that a ceasefire would be based on acceptance by Iraq of the provisions of Resolution 687. [ref 3] At the same time, the UN SC reaffirmed states' commitment to the sovereignty and territorial integrity of Iraq. [ref 4]

On the basis of a series of statements that deplored Iraq, the UN SC decided that Iraq had been and remained in material breach of its obligations under the relevant SC resolutions, including Resolution 678. [para 1] However, having determined the material breach, the UN SC decided to afford Iraq 'a final opportunity to comply with its disarmament obligations'. [para 2]

Under Resolution 1441, Iraq was obliged to provide, not later than thirty days from the date of the Resolution, an accurate, full, and complete declaration of its weapons of mass destruction programmes. [para 3] Iraq was mandated to provide UNMOVIC and the IAEA 'immediate, unimpeded, unconditional, and unrestricted access' to all facilities and records, and to allow UNMOVIC and the IAEA to interview any officials and persons. [para 5] Such unrestricted access included access to 'Presidential Sites', notwithstanding the 1998 Memorandum of Understanding between the United Nations and the Republic of Iraq ('MoU') in which the UN and Iraq had agreed to apply special procedures to the Presidential Sites in Iraq (MoU, para 4). UNMOVIC and the IAEA were entitled to declare exclusion zones and be given the unrestricted use and landing of aircraft. [para 7] UNMOVIC and the IAEA were also given the authority to remove all prohibited weapons and related items as the result of an inspection. [para 7] Prior to the adoption of Resolution 1441, UNMOVIC, the IAEA, and Iraq had agreed on practical arrangements regarding inspection, which were binding on Iraq under Resolution 1441. [para 6].

Iraq's failure to comply with Resolution 1441 was said to constitute 'a further material breach' of Iraq's obligations. [para 4] Iraq's non-compliance would 'be reported to the [Security] Council for assessment in accordance with paragraphs 11 and 12' of the Resolution. [para 4] According to paragraph 11, UNMOVIC and the IAEA were to report to the UN SC any failure by Iraq to comply with its disarmament obligations. [para 11] Upon receipt of a report 'in accordance with paragraphs 4 or 11' of the Resolution, the UN SC was to convene immediately in order to 'consider the situation' in securing international peace and security. [para 12] The UN SC warned Iraq that its continued violations would lead to 'serious consequences'. [para 13]

Analysis

First, one of the key terms of Resolution 1441 was material breach. [para 1] It was used in an initial informal draft by the US and UK on 25 September 2002. In that draft, Iraq's non-compliance, which constituted a further material breach, 'authorize[d] member states to use all necessary means to restore international peace and security' (US/UK Draft Resolution, para 10). Thus, the initial US/UK Draft Resolution explicitly linked the material breach to the authorization of the use of force.

The US/UK Draft Resolution reflected the so-called 'revival' argument. In April 1998, Michael Matheson, the legal advisor for the US Department of State, made it clear that according to the US position, material breaches of the ceasefire conditions set under Resolution 687 would allow the US and its cooperating countries to use force on their own (Glennon 137-142). The US/UK Draft Resolution was nevertheless immediately resisted by France and Russia. For them, a separate second resolution was necessary in the event of Iraq's non-compliance. France proposed the revised version, according to which France referred to neither a material breach nor the authorization of the use of force. Eventually, the negotiation led the US and UK to drop the explicit link between the material breach and the authorization of the use of force.

Second, the initial US/UK Draft Resolution was contested, not only because of its explicit reference to the authorization of the use of force, but also because of an indication to bypassing the UN SC's control over such authorization. Under the US/UK Draft Resolution, a further material breach seemed automatically to lead to the authorization of the use of force. France disagreed and instead suggested a two-stage approach consisting of the UN's inspection and the UN SC's subsequent assessment. Under France's informal draft, any 'serious failure' would be reported by UNMOVIC and the IAEA to the UN SC, which then would consider the 'needed steps' to ensure full compliance (French Draft Security Council Resolution, paras 10-11). Russia's informal text, which even avoided the term 'decide' in addressing Iraq, likewise anticipated the UN SC would need to consider the steps required in response to a report from the inspectors (Russian Federation Draft Security Council Resolution, paras 9-10).

In the light of these different drafts, paragraphs 4, 11, and 12 of Resolution 1441 represent a mixture of collective control and the initiatives of individual states. On the one hand, the Resolution contained some elements of collective control. Under paragraph 4, non-compliance was to be reported to the UN SC 'for assessment in accordance with paragraphs 11 and 12'. [para 4] Paragraphs 11 and 12 were cumulative requirements: UNMOVIC and the IAEA were directed to report Iraq's non-compliance to the UN SC, and the UN SC would convene in order to consider the situation. [paras 11-12] At the same time, the Resolution preserved the space for individual states' initiatives. Under paragraph 12, the UN SC was mandated to convene upon receipt of a report under paragraphs 4 or 11. The use of the term 'or' suggests that individual states (as opposed to UNMOVIC or the IAEA) were also expected to report Iraq's non-compliance which constituted a further material breach. In fact, the US delegation, upon the adoption of Resolution 1441, reiterated that not only UNMOVIC and the IAEA but also 'a Member State' was expected to report a further breach by Iraq (The Situation between Iraq and Kuwait (8 November 2002), page 3 ('2002 Situation')). The US remark contrasts with the statements by France, Russia, and China (2002 Situation, pages 5, 8, 13), which referred merely to UNMOVIC and the IAEA's involvement.

Third, and in relation to the previous two points, Member States' statements immediately after the adoption of Resolution 1441 confirmed that the Resolution did not establish an automatic link between Iraq's non-compliance and the use of force. The US and UK delegates assured other UN SC members that this resolution contained no 'hidden triggers' and no 'automaticity' with respect to the use of force (2002 Situation, pages 3-5). France reiterated that Resolution 1441 adopted the two-step approach the country had advocated. France welcomed the fact that 'all elements of automaticity [had] disappeared' from Resolution 1441 (2002 Situation, page 5). On the day the Resolution was adopted, China, France, and Russia further issued a joint statement reiterating

that Resolution 1441 'excludes any automaticity in the use of force' (Letter Dated 8 November 2002 from the Representatives of China, France and the Russian Federation to the United Nations Addressed to the President of the Security Council).

Overall, based on the draft texts and the statements made immediately after the adoption of the Resolution, it is reasonable to argue that the Resolution disconnected any automatic link between Iraq's material breach and the authorization of the use of force. While any terms of UN SC resolutions are subject to multiple interpretations, Resolution 1441 was adopted under the stated assumption that the matter ought to be considered again by the UN SC.

Impact

On 13 November 2002, five days after the UN SC adopted Resolution 1441, Iraq sent a letter to the UN Secretary-General in which it expressed dissent but reiterated its intention to allow inspectors in the country (Letter dated 13 November 2002 from the Minister for Foreign Affairs of Iraq addressed to the Secretary-General).

UNMOVIC and the IAEA inspectors swiftly commenced their work. On 18 November 2002, UNMOVIC Executive Chairman Hans Blix and IAEA Director General Mohamed ElBaradei arrived in Baghdad, leading an advance UNMOVIC and IAEA team of thirty personnel (Note by the Secretary General transmitting the Eleventh Quarterly Report of the Executive Chairman of the UN Monitoring, Verification and Inspection Commission in Accordance with Paragraph 12 of Security Council Resolution 1284 (1999), para 9 ('11th Quarterly Report')). The first UNMOVIC team of inspectors arrived in Iraq on 25 November and commenced the inspection on 27 November (11th Quarterly Report, para 13). On 7 December, Iraq itself submitted its declaration of more than 12,000 pages to the UN SC in accordance with paragraph 3 of Resolution 1441. Procedurally, Iraq was cooperative and gave prompt access to any site, including a Presidential Site (Note by the Secretary General transmitting the Twelfth Quarterly Report of the Executive Chairman of the UN Monitoring, Verification and Inspection Commission, in Accordance with Paragraph 12 of Security Council Resolution 1284 (1999) (12th Quarterly Report')). At the end of February 2003, UNMOVIC mobilized a total of 202 staff, including eighty-four inspectors (12th Quarterly Report, para 16). From 27 November 2002 until the withdrawal of inspectors on 18 March 2003, UNMOVIC conducted 731 inspections, covering 411 sites, and including eighty-eight new inspection sites (Note by the Secretary General transmitting the Thirteenth Quarterly Report of the Executive Chairman of the UN Monitoring, Verification and Inspection Commission, in Accordance with Paragraph 12 of Security Council Resolution 1284 (1999), para 17).

During three and a half months of inspection, no stockpiles of operative chemical or biological weapons were found in Iraq. However, on 20 March 2003 the US and its allied forces commenced 'Operation Iraqi Freedom'. The US and UK relied on UN SC resolutions to justify their military actions. According to the US, the authorization to use force was already granted by Resolution 678, and Iraq's material breach reactivated the authorization to use force (Remarks of the Honorable William Howard Taft, IV, Legal Adviser, US Department of State before the National Association of Attorneys General). The UK government presented substantially the same argument, albeit in a slightly different manner. The UK suggested that Resolution 1441, which referred to Iraq's material breach, worked as a trigger for 'reviving' the authorization to use force under Resolution 678. According to the UK, a further resolution by the UN SC was not necessary because Resolution 1441 merely required the UN SC to receive a report and 'consider' the situation (Lord Goldsmith, UK Attorney-General, Parliamentary Statement on the Legal Basis for the Use of Force against Iraq). [paras 4, 11, 12] While the UK's argument appears to differ from that of the US in terms of invoking Resolution 1441 as a trigger, both countries essentially relied on Resolution 678 as a legal basis for the use of force.

By contrast, France, Russia, and China emphasized the primary responsibility of the UN SC to

achieve the objective of disarming Iraq. During the UN SC debate on 19 March 2003, convened several hours before the commencement of military actions, France noted that the path mapped out in Resolution 1441 was 'being interrupted' (The Situation between Iraq and Kuwait (19 March 2003), page 5 ('2003 Situation')). Russia made it clear that neither Resolution 1441 nor other UN decisions concerning Iraq authorized the right to use force against Iraq outside the UN Charter (2003 Situation, page 8). China reiterated that the progress in the inspections would have made it possible for the UN SC to achieve the goal of disarming Iraq 'through peaceful means' (2003 Situation, page 18).

Controversies surrounding the interpretation of UN SC Resolution 1441 highlighted the legal uncertainties and political realities as to how and who may give meanings to the terms of UN SC resolutions. In principle, the general rule of treaty interpretation provided in Articles 31–32 of the Vienna Convention on the Law of Treaties ('VCLT') is applicable to the interpretation of UN SC resolutions. However, UN SC resolutions are different from treaties; the resolutions are drafted by a restricted circle of Member States, adopted according to a specific weighted voting procedure, and can create obligations on other UN Member States. Given the rather centralized process of adopting UN SC resolutions, one could argue that the general interpretive rule under the VCLT should not be applicable to UN SC resolutions; instead, a greater weight should be given to the intention of UN SC Member States, rather than the literal reading of the terms of UN SC resolutions.

With respect to the interpretation of Resolution 1441, however, it is difficult to support the positions of the US and UK governments, regardless of the interpretive rules one may wish to follow. According to the statements upon the adoption of Resolution 1441, it was the explicit intention of the permanent members of the UN SC, including the US and UK, that there was no automatic authorization of the use of force. The US/UK interpretation is not supported by the literal reading of relevant resolutions either. For instance, the interpretation contradicts paragraph 34 of Resolution 687—in which the SC decided to take further steps—and paragraph 2 of Resolution 678—under which the authorization to use force was accorded to 'Member States co-operating with the [g]overnment of Kuwait'.

Overall, UN SC members, after years of economic sanctions, inspections, and diplomatic negotiations, ultimately failed to resolve the situation in Iraq through the UN's collective security system. The UN SC's resolutions were invoked by different UN SC members in order to justify their clearly contradictory political directions. In particular, Resolution 1441 was given meanings opposite to the assurances given at the time of voting. While, legally speaking, the statements of UN SC members are by no means decisive in interpreting the terms of UN SC resolutions, the inconsistency of UN SC members during one of the most critical moments in international peace and security has substantially undermined the credibility of UN SC Member States and of its institutional processes and decisions.

Further analysis of Relevant Materials

Leading Comments

Michael Byers 'Agreeing to Disagree: Security Council Resolution 1441 and Intentional Ambiguity' (2004) 10 *Global Governance* 165

Marc Weller 'Resolution 1441 (2002) and the Invasion of Iraq' in *Iraq and the Use of Force in International Law* (Oxford, Oxford University Press, 2010)

Efthymios Papastavridis 'Interpretation of Security Council Resolutions Under Chapter VII in the Aftermath of the Iraqi Crisis' (2007) 56 *International & Comparative Law Quarterly* 83–118

Trevor Findlay and Ben Mines 'UNMOVIC in Iraq: Opportunity Lost' (2003) *Verification*

Yearbook 2003 45–63

Michael Glennon et al 'Legal Authority for the Possible Use of Force against Iraq' (1998) 92 *Proceedings of the Annual Meeting, American Society of International Law* 136–150

Materials Cited

France

French Draft Security Council Resolution (23 October 2002)
[<http://www.casi.org.uk/info/francedraftscr0210.pdf>]

Netherlands

Rapport Commissie van onderzoek besluitvorming Irak (Davids Report) (1 December 2010)
[<https://www.rijksoverheid.nl/documenten/rapporten/2010/01/12/rapport-commissie-davids>]

Russia

Russian Federation Draft Security Council Resolution (23 October 2002)
[<http://www.casi.org.uk/info/russiadraftscr0210.pdf>]

United Kingdom

The Report of the Iraq Inquiry (Chilcot report) (6 July 2016) HC 264

Lord Goldsmith, UK Attorney-General, Parliamentary Statement on the Legal Basis for the Use of Force against Iraq (17 March 2003) in (2003) 52 *International and Comparative Law Quarterly* 811–812

The Foreign and Commonwealth Office Paper, Iraq: Legal Basis for the Use of Force (17 March 2003) reproduced in (2003) 52 *International and Comparative Law Quarterly* 812–814

Iraq's Weapons of Mass Destruction: The Assessment of the British Government (24 September 2002)

[http://news.bbc.co.uk/nol/shared/spl/hi/middle_east/02/uk_dossier_on_iraq/pdf/iraqdossier.pdf]

United Nations

Vienna Convention on the Law of Treaties (signed 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331

Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS 16

United Nations Security Council

Note by the Secretary General transmitting the Thirteenth Quarterly Report of the Executive Chairman of the UN Monitoring, Verification and Inspection Commission, in Accordance with Paragraph 12 of Security Council Resolution 1284 (1999) (30 May 2003) UN Doc S/2003/580

The Situation between Iraq and Kuwait (19 March 2003) UN Doc S/PV.4721

Note by the Secretary General transmitting the Twelfth Quarterly Report of the Executive Chairman of the UN Monitoring, Verification and Inspection Commission, in Accordance with Paragraph 12 of Security Council Resolution 1284 (1999) (28 February 2003) UN Doc S/2003/232

Note by the Secretary General transmitting the Eleventh Quarterly Report of the Executive

Chairman of the UN Monitoring, Verification and Inspection Commission in Accordance with Paragraph 12 of Security Council Resolution 1284 (1999) (27 November 2002) UN Doc S/2002/1303

Letter Dated 13 November 2002 from the Secretary-General Addressed to the President of the Security Council: Letter dated 13 November 2002 from the Minister for Foreign Affairs of Iraq addressed to the Secretary-General (13 November 2002) UN Doc S/2002/1242 [http://repository.un.org/bitstream/handle/11176/29487/S_2002_1242-EN.pdf]

The Situation between Iraq and Kuwait (8 November 2002) UN Doc S/PV.4644

Letter Dated 8 November 2002 from the Representatives of China, France and the Russian Federation to the United Nations Addressed to the President of the Security Council (8 November 2002) UN Doc S/2002/1236

United Kingdom of Great Britain and Northern Ireland and United States of America: draft resolution on the decision to set up an enhanced inspection regime to ensure Iraq's compliance of its disarmament obligations (7 November 2002) UN Doc S/2002/1198 [<http://www.un.org/News/dh/iraq/iraq-blue-en-s-2002-1198.pdf>]

Resolution 1284 (1999) on Establishment of the UN Monitoring, Verification and Inspection Commission (UNMOVIC) (17 December 1999) UN Doc S/RES/1284

Letter Dated 25 February 1998 from the Secretary-General Addressed to the President of the Security Council: Memorandum of Understanding between the United Nations and the Republic of Iraq (27 February 1998) UN Doc S/1998/166

Resolution 687 (1991) on the Restoration of the Sovereignty, Independence and Territorial Integrity of Kuwait (3 April 1991) UN Doc S/RES/687

United Nations Security Council Resolution 678 (1990) authorizing Member States to use all necessary means to implement Security Council Resolution 660 (1990) and all relevant Resolutions (29 November 1990) UN Doc S/RES/678 (1990)

United States

Remarks of the Honorable William Howard Taft, IV, Legal Adviser, US Department of State before the National Association of Attorneys General (20 March 2003)

Reporter(s): Machiko Kanetake

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The Security Council,

Recalling all its previous relevant resolutions, in particular its resolutions 661 (1990) of 6 August 1990, 678 (1990) of 29 November 1990, 686 (1991) of 2 March 1991, 687 (1991) of 3 April 1991, 688 (1991) of 5 April 1991, 707 (1991) of 15 August 1991, 715 (1991) of 11 October 1991, 986 (1995) of 14 April 1995, and 1284 (1999) of 17 December 1999, and all the relevant statements of its President,

Recalling also its resolution 1382 (2001) of 29 November 2001 and its intention to implement it fully,

Recognizing the threat Iraq's non-compliance with Council resolutions and proliferation of weapons of mass destruction and long-range missiles poses to international peace and security,

Recalling that its resolution 678 (1990) authorized Member States to use all necessary means to uphold and implement its resolution 660 (1990) of 2 August 1990 and all relevant resolutions subsequent to resolution 660 (1990) and to restore international peace and security in the area,

Further recalling that its resolution 687 (1991) imposed obligations on Iraq as a necessary step for achievement of its stated objective of restoring international peace and security in the area,

Deploring the fact that Iraq has not provided an accurate, full, final, and complete disclosure, as required by resolution 687 (1991), of all aspects of its programmes to develop weapons of mass destruction and ballistic missiles with a range greater than one hundred and fifty kilometres, and of all holdings of such weapons, their components and production facilities and locations, as well as all other nuclear programmes, including any which it claims are for purposes not related to nuclear-weapons-usable material,

Deploring further that Iraq repeatedly obstructed immediate, unconditional, and unrestricted access to sites designated by the United Nations Special Commission (UNSCOM) and the International Atomic Energy Agency (IAEA), failed to cooperate fully and unconditionally with UNSCOM and IAEA weapons inspectors, as required by resolution 687 (1991), and ultimately ceased all cooperation with UNSCOM and the IAEA in 1998,

Deploring the absence, since December 1998, in Iraq of international monitoring, inspection, and verification, as required by relevant resolutions, of weapons of mass destruction and ballistic missiles, in spite of the Council's repeated demands that Iraq provide immediate, unconditional, and unrestricted access to the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC), established in resolution 1284 (1999) as the successor organization to UNSCOM, and the IAEA, and regretting the consequent prolonging of the crisis in the region and the suffering of the Iraqi people,

Deploring also that the Government of Iraq has failed to comply with its commitments pursuant to resolution 687 (1991) with regard to terrorism, pursuant to resolution 688 (1991) to end repression of its civilian population and to provide access by international humanitarian organizations to all those in need of assistance in Iraq, and pursuant to resolutions 686 (1991), 687 (1991), and 1284 (1999) to return or cooperate in accounting for Kuwaiti and third country nationals wrongfully detained by Iraq, or to return Kuwaiti property wrongfully seized by Iraq,

Recalling that in its resolution 687 (1991) the Council declared that a ceasefire would be based on acceptance by Iraq of the provisions of that resolution, including the obligations on Iraq contained therein,

Determined to ensure full and immediate compliance by Iraq without conditions or restrictions with its obligations under resolution 687 (1991) and other relevant resolutions and recalling that the resolutions of the Council constitute the governing standard of Iraqi compliance,

Recalling that the effective operation of UNMOVIC, as the successor organization to the Special Commission, and the IAEA is essential for the implementation of resolution 687 (1991) and other relevant resolutions,

Noting that the letter dated 16 September 2002 from the Minister for Foreign Affairs of Iraq addressed to the Secretary-General is a necessary first step toward rectifying Iraq's continued failure to comply with relevant Council resolutions,

Noting further the letter dated 8 October 2002 from the Executive Chairman of UNMOVIC and the Director-General of the IAEA to General Al-Saadi of the Government of Iraq laying out the practical arrangements, as a follow-up to their meeting in Vienna, that are prerequisites for the resumption of inspections in Iraq by UNMOVIC and the IAEA, and expressing the gravest concern at the continued failure by the Government of Iraq to provide confirmation of the arrangements as laid out in that letter,

Reaffirming the commitment of all Member States to the sovereignty and territorial integrity of Iraq, Kuwait, and the neighbouring States,

Commending the Secretary-General and members of the League of Arab States and its Secretary-General for their efforts in this regard,

Determined to secure full compliance with its decisions,

Acting under Chapter VII of the Charter of the United Nations,

1. *Decides* that Iraq has been and remains in material breach of its obligations under relevant resolutions, including resolution 687 (1991), in particular through Iraq's failure to cooperate with United Nations inspectors and the IAEA, and to complete the actions required under paragraphs 8 to 13 of resolution 687 (1991);

2. *Decides*, while acknowledging paragraph 1 above, to afford Iraq, by this resolution, a final opportunity to comply with its disarmament obligations under relevant resolutions of the Council; and accordingly decides to set up an enhanced inspection regime with the aim of bringing to full and verified completion the disarmament process established by resolution 687 (1991) and subsequent resolutions of the Council;

3. *Decides* that, in order to begin to comply with its disarmament obligations, in addition to submitting the required biannual declarations, the Government of Iraq shall provide to UNMOVIC, the IAEA, and the Council, not later than 30 days from the date of this resolution, a currently accurate, full, and complete declaration of all aspects of its programmes to develop chemical, biological, and nuclear weapons, ballistic missiles, and other delivery systems such as unmanned aerial vehicles and dispersal systems designed for use on aircraft, including any holdings and precise locations of such weapons, components, subcomponents, stocks of agents, and related material and equipment, the locations and work of its research, development and production facilities, as well as all other chemical, biological, and nuclear programmes, including any which it claims are for purposes not related to weapon production or material;

4. *Decides* that false statements or omissions in the declarations submitted by Iraq pursuant to this resolution and failure by Iraq at any time to comply with, and cooperate fully in the implementation of, this resolution shall constitute a further material breach of Iraq's obligations and will be reported to the Council for assessment in accordance with paragraphs 11 and 12 below;

5. *Decides* that Iraq shall provide UNMOVIC and the IAEA immediate, unimpeded, unconditional, and unrestricted access to any and all, including underground, areas, facilities, buildings, equipment, records, and means of transport which they wish to inspect, as well as immediate, unimpeded, unrestricted, and private access to all officials and other persons whom UNMOVIC or the IAEA wish to interview in the mode or location of UNMOVIC's or the IAEA's choice pursuant to any aspect of their mandates; further decides that UNMOVIC and the IAEA may at their discretion conduct interviews inside or outside of Iraq, may facilitate the travel of those interviewed and family members outside of Iraq, and that, at the sole discretion of UNMOVIC and the IAEA, such interviews may occur without the presence of observers from the Iraqi Government; and instructs UNMOVIC and requests the IAEA to resume inspections no later than 45 days following adoption of this resolution and to update the Council 60 days thereafter;

6. *Endorses* the 8 October 2002 letter from the Executive Chairman of UNMOVIC and the Director-General of the IAEA to General Al-Saadi of the Government of Iraq, which is annexed hereto, and decides that the contents of the letter shall be binding upon Iraq;

7. *Decides* further that, in view of the prolonged interruption by Iraq of the presence of UNMOVIC and the IAEA and in order for them to accomplish the tasks set forth in this resolution and all previous relevant resolutions and notwithstanding prior understandings, the Council hereby establishes the following revised or additional authorities, which shall be binding upon

Iraq, to facilitate their work in Iraq:

- UNMOVIC and the IAEA shall determine the composition of their inspection teams and ensure that these teams are composed of the most qualified and experienced experts available;
- All UNMOVIC and IAEA personnel shall enjoy the privileges and immunities, corresponding to those of experts on mission, provided in the Convention on Privileges and Immunities of the United Nations and the Agreement on the Privileges and Immunities of the IAEA;
- UNMOVIC and the IAEA shall have unrestricted rights of entry into and out of Iraq, the right to free, unrestricted, and immediate movement to and from inspection sites, and the right to inspect any sites and buildings, including immediate, unimpeded, unconditional, and unrestricted access to Presidential Sites equal to that at other sites, notwithstanding the provisions of resolution 1154 (1998) of 2 March 1998;
- UNMOVIC and the IAEA shall have the right to be provided by Iraq the names of all personnel currently and formerly associated with Iraq's chemical, biological, nuclear, and ballistic missile programmes and the associated research, development, and production facilities;
- Security of UNMOVIC and IAEA facilities shall be ensured by sufficient United Nations security guards;
- UNMOVIC and the IAEA shall have the right to declare, for the purposes of freezing a site to be inspected, exclusion zones, including surrounding areas and transit corridors, in which Iraq will suspend ground and aerial movement so that nothing is changed in or taken out of a site being inspected;
- UNMOVIC and the IAEA shall have the free and unrestricted use and landing of fixed- and rotary-winged aircraft, including manned and unmanned reconnaissance vehicles;
- UNMOVIC and the IAEA shall have the right at their sole discretion verifiably to remove, destroy, or render harmless all prohibited weapons, subsystems, components, records, materials, and other related items, and the right to impound or close any facilities or equipment for the production thereof; and
- UNMOVIC and the IAEA shall have the right to free import and use of equipment or materials for inspections and to seize and export any equipment, materials, or documents taken during inspections, without search of UNMOVIC or IAEA personnel or official or personal baggage;

8. *Decides* further that Iraq shall not take or threaten hostile acts directed against any representative or personnel of the United Nations or the IAEA or of any Member State taking action to uphold any Council resolution;

9. *Requests* the Secretary-General immediately to notify Iraq of this resolution, which is binding on Iraq; demands that Iraq confirm within seven days of that notification its intention to comply fully with this resolution; and demands further that Iraq cooperate immediately, unconditionally, and actively with UNMOVIC and the IAEA;

10. *Requests* all Member States to give full support to UNMOVIC and the IAEA in the discharge of their mandates, including by providing any information related to prohibited programmes or other aspects of their mandates, including on Iraqi attempts since 1998 to acquire prohibited items, and by recommending sites to be inspected, persons to be interviewed, conditions of such

interviews, and data to be collected, the results of which shall be reported to the Council by UNMOVIC and the IAEA;

11. *Directs* the Executive Chairman of UNMOVIC and the Director-General of the IAEA to report immediately to the Council any interference by Iraq with inspection activities, as well as any failure by Iraq to comply with its disarmament obligations, including its obligations regarding inspections under this resolution;

12. *Decides* to convene immediately upon receipt of a report in accordance with paragraphs 4 or 11 above, in order to consider the situation and the need for full compliance with all of the relevant Council resolutions in order to secure international peace and security;

13. *Recalls*, in that context, that the Council has repeatedly warned Iraq that it will face serious consequences as a result of its continued violations of its obligations;

14. *Decides* to remain seized of the matter.