

Multilateral Responses to the Iraqi Invasion of Kuwait: Economic Sanctions and Emerging Proliferation Controls

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ARTICLES

MULTILATERAL RESPONSES TO THE IRAQI INVASION OF KUWAIT: ECONOMIC SANCTIONS AND EMERGING PROLIFERATION CONTROLS

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I. INTRODUCTION	2
II. EVENTS LEADING TO THE INVASION.....	3
III. SANCTIONS IMPOSED AGAINST IRAQ AND KUWAIT	5
A. <i>Sanctions Imposed by the United Nations Security Council</i>	5
B. <i>Implementation of Sanctions by the United States Government</i>	7
1. Executive Orders and Statutory Authority ...	7
2. Assets Control Regulations	10
IV. EMERGING PROLIFERATION CONTROLS ON MISSILE TECHNOLOGY AND NUCLEAR, BIOLOGICAL AND CHEMICAL WEAPONS	12
A. <i>Reauthorization of the Export Administration Act</i>	13
B. <i>The Bush Administration's Solution to the Proliferation Problem</i>	15
C. <i>Emerging Multilateral Proliferation Controls</i>	19
V. CONCLUSION	20

We have in this past year made great progress in ending the long era of conflict and cold war. We have before us the opportunity to forge for ourselves and for future generations a new world order, . . . an order in which a credible United Nations can use its peacekeeping role to fulfill the promise envisioned of the U.N.'s founders.¹

George Bush

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1. *Address of President Bush to the Nation on Persian Gulf War*, Wash. Post,

I. INTRODUCTION

Iraq's invasion of Kuwait on August 2, 1990, was predicated, in part, on an allegation that Kuwait and other Persian Gulf nations were producing oil in excess of quotas established by the Organization of Petroleum Exporting Countries ("OPEC").² Iraqi President Saddam Hussein characterized Kuwait and other OPEC countries as "stabbing Iraq in the back" by causing oil prices to fall and depriving his country of much needed revenue.³

On the day of the Iraqi invasion of Kuwait, President Bush issued two executive orders which placed an embargo on trade and froze the United States-based assets of Iraq and Kuwait.⁴ In a showing of world unity, the United Nations Security Council voted 13 to 0, with Cuba and Yemen abstaining, to follow the United States' initiative by requiring all member states to impose similar sanctions in accordance with a United Nations resolution.⁵

In addition to the imposition of sanctions, the invasion affected U.S. foreign policy in a less overt manner by motivating the U.S. Government to implement immediate proliferation controls relating to chemical and biological weapons on Iraq and other countries. This Ar-

January 17, 1991, at A29.

2. CONGRESSIONAL RESEARCH SERVICE, IRAQ-KUWAIT CRISIS: U.S. POLICY AND OPTIONS, ISSUE BRIEF NO. IB90117, at 2, 101st Cong., 2nd Sess. (1990) [hereinafter POLICY AND OPTIONS]. OPEC is comprised of delegations from the following countries: Algeria, Ecuador, Gabon, Indonesia, Iran, Iraq, Kuwait, Libya, Nigeria, Qatar, Saudi Arabia, United Arab Emirates and Venezuela. OPEC was established in 1960 and serves to safeguard the interests of its members in relation to their petroleum production. OPEC "aims to unify and co-ordinate members' petroleum policies." 1 THE EUROPA WORLD YEAR BOOK 199 (1990).

3. CONGRESSIONAL RESEARCH SERVICE, IRAQ-KUWAIT CRISIS: A CHRONOLOGY OF EVENTS, July 17, 1990 - September 17, 1990, REP. NO. 90-480F, at 22 101st Cong., 2nd Sess. (1990) [hereinafter CHRONOLOGY]; POLICY AND OPTIONS, *supra* note 2.

4. Exec. Order No. 12, 724, 55 Fed. Reg. 33,089 (1990); Executive Order No. 12, 725, 55 Fed. Reg. 33,091 (1990); Executive Order No. 12,722, 55 Fed. Reg. 31,803 (1990); Exec. Order No. 12,723, 55 Fed. Reg. 31,805 (1990). Considerable debate exists as to the effectiveness of economic sanctions. Nevertheless, the United States has increasingly used economic sanctions as a means of obtaining a desired foreign policy objective. See B. CARTER, INTERNATIONAL ECONOMIC SANCTIONS: IMPROVING THE HAPHAZARD U.S. LEGAL REGIME 1 (1988). The United States used economic sanctions for foreign policy reasons approximately 62 times between World War II and 1984. *Id.* at 10-11. Although there are difficulties in measuring the effectiveness of sanctions, one study found that sanctions were effective approximately 37% of the time. *Id.* at 14. The sanctions imposed against Iraq and Kuwait appear to be the most comprehensive in recent U.S. foreign policy.

5. U.N. SCOR (2933rd mtg.), U.N. Doc. S/RES/661 (1990).

ticle analyzes the effect of the Iraqi invasion of Kuwait on U.S. foreign policy and its implications for world policy. Specifically, it analyzes the sanctions imposed against Iraq and Kuwait by the United Nations and the United States, and the United States' response to the invasion with the implementation of more stringent proliferation controls.

As President Bush observed in his Oval Office address following the U.S. attack on Iraq, nations are aligning in a new world order where multilateral cooperation is integral.⁶ The Persian Gulf War has accelerated the post-Cold War alignment of nations which began with the diminished Soviet threat and the emerging democracies in Eastern Europe. This is evidenced by the truly world-wide effort to impose comprehensive sanctions against Iraq.

Moreover, the invasion has created a sense of urgency with respect to the need for multilateral proliferation controls.⁷ Iraq's actions have prompted a world-wide realization of the potential threat posed by a country with missile technology and nuclear, chemical and biological weapons. The invasion is likely to lead to multilateral proliferation controls through international organizations including the Missile Technology Control Regime, the Australia Group and the London Nuclear Suppliers Group. Because the efforts of these groups will be aimed at assimilating all nations in the forbearance or controlled uses of missile technology and nuclear, chemical and biological weapons, it is likely that Eastern bloc membership will be solicited.

II. EVENTS LEADING TO THE INVASION

Before considering the U.S. foreign policy response to the invasion, it is important to review the major events leading to the Iraqi conflict during the two weeks before the August 2, 1990 invasion. In particular, the events are demonstrative of the regional instability which has served as a catalyst for proliferation controls. On July 18, 1990, a letter was sent to the Arab League⁸ by Iraqi Foreign Minister Tariq Aziz

6. Former British Prime Minister Margaret Thatcher stated, "I cannot remember a time when we had the world so strongly together." 7 Int'l Trade Rep. (BNA) 1214 (Aug. 8, 1990).

7. The Administration has stated that its "efforts to stem the spread of weapons of mass destruction will contribute to the construction of a new world order." White House press release (March 8, 1991).

8. The League of Arab States was founded in 1945 and is a voluntary association whose main purpose is to "coordinate [members'] policies and activities and direct them towards the common good of all Arab countries." 1 THE EUROPA WORLD YEAR BOOK 1990, at 174 (1990). The Arab League is comprised of the following countries: Algeria, Bahrain, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania,

accusing Kuwait "of stealing Iraqi oil, building military installations, and refusing to cancel loans it had made to Iraq during the Iran-Iraq War."⁹ The letter stated that Kuwait and the United Arab Emirates were exceeding oil production quotas and that if they did not reduce their oil production, Iraq would be forced to take further measures.¹⁰ In response to Foreign Minister Aziz's letter, Kuwait sent a letter to the Arab League, on July 19, 1990, stating that "Iraq frequently had violated Kuwaiti territory and had refused repeatedly to settle long-standing border disputes."¹¹ On July 21, 1990, the Kuwaiti government also advised the United Nations Secretary General of these developments. This prompted a response from the Iraqi Government which accused "Kuwait of implementing an 'Imperialist' plan."¹² Before the end of July, both Iraq and Kuwait had amassed troops and military hardware, including missiles, on their common border and activated a full military alert.¹³

In parallel with the escalating tension between Iraq and Kuwait, Arab leaders attempted to mediate a peaceful resolution. Egyptian President Hosni Mubarak held discussions with Iraqi Foreign Minister Aziz and the Amir of Kuwait, Shaykh Jabir al-Ahmad al-Sabah, on July 22 and 24, 1990, respectively.¹⁴ Both countries deemed the mediation efforts to be successful and agreed to discuss all disputes.¹⁵ OPEC moved toward accommodating Iraq's concerns over oil pricing and production. On July 27, 1990, the 87th session of OPEC met and decided to set the benchmark price for oil at \$20 dollars per barrel and to limit production to 22.491 million barrels per day until the end of the year.¹⁶ Iraq had requested that the price per barrel of oil be increased to \$25 dollars, a \$10 dollar increase from the then market price.¹⁷ On July 31, 1990, talks between Iraq and Kuwait were held in Saudi Arabia with

Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, Yemen Arab Republic, and Yemen People's Democratic Republic. *Id.*

9. CHRONOLOGY, *supra* note 3, at 22.

10. *Id.*

11. *Id.*

12. *Id.* at 21.

13. *Id.* at 20-21.

14. *Id.* at 21; *See also ACCESS Guide to the Persian Gulf Crisis*, ACCESS: A Security Information Service, at 7 (1991) [hereinafter *ACCESS*].

15. CHRONOLOGY, *supra* note 3, at 21.

16. *Id.*; *ACCESS*, *supra* note 14, at 7.

17. CONGRESSIONAL RESEARCH SERVICE, *IRAQ'S INVASION OF KUWAIT: A REVIEW OF EVENTS*, REP. NO. IB90118, at 2, 101st Cong., 2nd Sess. (1990) [hereinafter *INVASION*].

King Fahd of Saudi Arabia mediating.¹⁸ Iraq reportedly “demanded concessions from Kuwait for seizing Iraqi territory and stealing \$2.4 billion worth of oil from disputed oil fields along their common border. Iraq had also demanded that Kuwait cancel [their] estimated \$10 billion war debt.”¹⁹ Parties concluded their talks the following day but failed to reach an agreement. Future meetings were discussed but not scheduled.²⁰

On August 2, 1990, Iraq moved over 100,000 troops, 300 tanks, artillery, armored personnel carriers, and other supporting forces into Kuwait. Within six hours, Kuwait was occupied by Iraq.²¹ Kuwait’s 20,000 man army was no match for the Iraqi forces.²² After the invasion, Kuwait’s ruling Amir fled to Saudi Arabia and a group of Kuwaiti revolutionaries reportedly formed a new provisional government.²³ Iraq claimed that the installed Provisional Free Government of Kuwait asked for assistance from Iraq and would eventually hold elections.²⁴

The immediate multilateral response to the Iraqi invasion was, in some instances, to impose sanctions, and in others, to condemn Iraq’s actions. On the day of the invasion, the United States, France and Britain imposed sanctions against Iraq. The Soviet Union, Israel, Japan, Iran and the European Community, and several countries in Latin America, Africa and Eastern Europe, condemned the Iraqi use of force. The United Nations Security Council passed Resolution 660 calling for the unconditional withdrawal of Iraqi troops from Kuwait.²⁵

III. SANCTIONS IMPOSED AGAINST IRAQ AND KUWAIT

A. *Sanctions Imposed by the United Nations Security Council*

From August 2 until the end of November 1990, the United Nations Security Council adopted twelve resolutions concerning the Iraqi

18. CHRONOLOGY, *supra* note 3, at 20.

19. *Id.*; CONGRESSIONAL RESEARCH SERVICE, OIL AND IRAQ’S INVASION OF KAUWAIT, REP. NO. 90-116 at 2, 101st Cong., 2nd Sess. (1990).

20. *Id.*

21. INVASION, *supra* note 17, at 3; POLICY AND OPTIONS, *supra* note 2, at 2.

22. INVASION, *supra* note 17, at 3.

23. *Id.*; POLICY AND OPTIONS, *supra* note 2, at 2.

24. CHRONOLOGY, *supra* note 3, at 19. Less than two weeks earlier in his own country, Saddam Hussein was declared President for life by the Parliament, which is dominated by Hussein’s Ba’ath Party. *Id.* at 22. To observers, this was a clear indication that Hussein had no intention of conducting free elections in his own country as he had promised. *Id.*

25. *Id.* at 19-20. Resolution 660 passed in a 14-0 vote with Yemen abstaining.

invasion of Kuwait. These resolutions established sanctions against Iraq and Kuwait and authorized member states to enforce the sanctions. The United Nations imposed sanctions against Iraq and Kuwait on August 6, 1990, by a vote of 13 to 0 with Cuba and Yemen abstaining.²⁶ The Security Council cited Iraq's failure to withdraw its troops immediately and unconditionally from Kuwaiti territory, as called for in Security Council Resolution 660.²⁷

Subsequent resolutions, particularly Resolutions 665²⁸ and 670,²⁹

26. U.N. SCOR (2933rd mtg.), U.N. Doc. S/RES/661 (1990), [hereinafter Resolution 661]. Resolution 661, required, *inter alia*, that each member state prevent: (i) the import into the member state of products originating from Iraq and Kuwait; (ii) any activities which would promote the export or trans-shipment of any products from Iraq or Kuwait and any dealings in any products originating in Iraq or Kuwait and exported therefrom, including the transfer of funds to Iraq or Kuwait for the purposes of such activities or dealings; (iii) the sale or supply of any products to Iraq or Kuwait, including weapons or any other military equipment, but not including supplies for medical purposes and food provided under humanitarian circumstances; and (iv) the furnishing of funds or other financial and economic resources to the Government of Iraq or to persons or entities within Iraq or Kuwait, except as payment for supplies for medical purposes and food provided under humanitarian circumstances. *Id.* at 2.

Pursuant to Resolution 661, a committee was established to study the implementation of the sanctions and to gather information from the member states concerning implementation within their countries. *Id.* The committee is also to examine requests for assistance from Iraq and Kuwait and to review whether humanitarian circumstances exist which justify the furnishing of food. U.N. SCOR (2939th mtg.), U.N. Doc. S/RES/666 at 2 (1990); U.N. SCOR (2942d mtg.), U.N. Doc. S/RES/669 at 1 (1990). The Security Council may determine whether humanitarian circumstances exist and will supervise, together with appropriate humanitarian agencies, the furnishing of food to ensure that the food reaches the intended beneficiaries. *Id.*

27. *Id.*

28. U.N. SCOR (2938th mtg.), U.N. Doc. S/RES/665 (1990). Resolution 665 calls upon member states with maritime forces deployed in the Persian Gulf "to use such measures commensurate to the specific circumstances as may be necessary under the authority of the Security Council to halt all inward and outward maritime shipping [from Iraq or Kuwait] in order to inspect and verify their cargoes and destinations." *Id.* at 10-11.

29. U.N. SCOR (2943rd mtg.), U.N. Doc. S/RES/670 (1990). Resolution 670 requires that member states "deny permission to any aircraft to take off from their territory if the aircraft would carry any cargo to or from Iraq or Kuwait" except as permitted by Resolution 661. *Id.* at 2. The Resolution further requires that member states deny permission to any aircraft destined to land in Iraq or Kuwait to overfly the member state's territory unless the aircraft has been inspected to ensure compliance with Resolution 661, the flight is certified by the committee established by the Security Council, or it is a UNIIMOG flight. *Id.* Member states are permitted to take "such measures as may be necessary" to enforce the resolution while observing international law, including the Chicago Convention. *Id.* at 3. Lastly, Resolution 670 calls upon member states to detain Iraqi ships which have been used in violation of Resolution

clarified the obligations of member states to implement Resolution 661 and specifically granted member states the authority to enforce sanctions. Confronted with Iraq's "flagrant contempt" of the Security Council's repeated demands, Resolution 678 was issued on November 29, 1990.³⁰ Resolution 678 authorized member states "to use all necessary means to uphold and implement [Resolution 660] and all subsequent relevant resolutions and to restore international peace and security in the area" unless Iraq, on or before January 15, 1991, withdrew from Kuwait and otherwise fully implemented the resolutions.³¹

The United Nations' resolutions did not restrict member states from assisting the legitimate Government of Kuwait in exile, including taking appropriate measures to protect Kuwait's assets.³²

B. Implementation of Sanctions by the United States Government

1. Executive Orders and Statutory Authority

Prior to the requirement by the United Nations Security Council that member states impose sanctions against Iraq and Kuwait, the President issued two Executive Orders which placed an embargo on trade with Iraq³³ and blocked both Iraqi and Kuwaiti assets.³⁴ These executive orders were promulgated under the authority of the International Emergency Economic Powers Act ("IEEPA").³⁵ With respect to

661 or to deny such ships entrance to their ports. *Id.*

30. U.S. SCOR (2963rd mtg.), U.N. Doc S/RES/678 (1990).

31. *Id.*

32. Resolution 661, *supra* note 26, at 3.

33. Exec. Order 12,722, 55 Fed. Reg. 31,803 (1990).

34. Exec. Order 12,723, 55 Fed. Reg. 31,805 (1990).

35. 50 U.S.C. app. §§ 1701-1706 (1982 & Supp. V 1987). IEEPA is the modern statutory authority for U.S. economic sanctions. However, the U.S. sanctions were traditionally imposed under the authority of the Trading with the Enemy Act ("TWEA") to prevent the enemy from securing money in times of war. 50 U.S.C. §§ 1-6, 7-39 (1917). *Aldridge v. Franco-Wyoming Security Corporation*, 31 A.2d 246, 27 Del. Ch. 80 (1943). In 1940, in response to the Nazi invasion of Norway and Denmark, the President prohibited the transfer of property "in which [either country] or any national thereof [had] an interest, unless . . . licensed by the Treasury." Exec. Order No. 8,389, 5 Fed. Reg. 1,400 (1940). However, since it was not considered a time of war, Congress authorized the Treasury to act pursuant to the President's Executive Order. Joint Resolution, May 7, 1940, 54 Stat. 179 (1940). As amended, TWEA expanded the President's ability to use these powers "during any other period of national emergency declared by the President." Joint Resolution, May 7, 1940, 54 Stat. 179 (1940).

In 1977, TWEA was amended to its original form serving exclusively as a wartime statutory authority. Nevertheless, some of the oldest sanctions imposed under TWEA

any person or property within the jurisdiction of the United States, IEEPA gives the President the authority to "investigate, regulate, or prohibit" transactions and other dealings with a foreign country.³⁶

Under IEEPA, the President can exercise the power granted whenever there is an "unusual and extraordinary threat which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States."³⁷ However, the President must declare a national emergency to employ the powers of IEEPA.³⁸

In issuing Executive Orders 12,722 and 12,723, the President declared a national emergency under the National Emergency Act,³⁹ finding that "the policies and actions of the Government of Iraq [constituted] an unusual and extraordinary threat to the national security and foreign policy of the United States."⁴⁰

After the United Nations Security Council issued Resolution 661, the President superseded Executive Orders 12722 and 12723 with Executive Orders 12,724⁴¹ and 12,725.⁴² The earlier executive orders were

remain in effect today: the postwar East-West trade restrictions, the financial and trade restrictions against North Korea, Vietnam, Cambodia and the sanctions against Cuba. M. MALLOY, *ECONOMIC SANCTIONS AND U.S. TRADE*, 185 (1990).

36. 50 U.S.C. § 1702 (1982 & Supp. V 1987).

37. *Id.*

38. *Id.* The President is also required to comply with a range of procedural safeguards that include consulting Congress in every possible instance and reporting to the Congress whenever IEEPA authority is exercised. 50 U.S.C. § 1703 (1982 & Supp. V 1987). In the report, Congress must be made aware of the circumstances surrounding the emergency, the nature of the threat involved, the authority to be exercised, the reasons for the exercise of those authorities, and the countries involved. *Id.*

39. 50 U.S.C. §§ 1601-1651 (1982 & Supp. V 1987).

40. Exec. Order No. 12,723, 55 Fed. Reg. 31,805 (1990); Exec. Order No. 12,722, 55 Fed. Reg. 31,803 (1990).

41. 55 Fed. Reg. 33,089 (1990).

42. 55 Fed. Reg. 33,091 (1990). Executive Orders 12,724 and 12,725 impose parallel sanctions against Iraq and Kuwait. Taken together, the Executive Orders impose the sanctions set forth below:

1. All property and interests in property of the Governments of Iraq or Kuwait that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are blocked.
2. The importation into the United States of any goods or services of Iraqi or Kuwaiti origin is prohibited.
3. The exportation of any good, technology or service to Iraq or Kuwait, or to any entity operated from Iraq or Kuwait or owned or controlled by the Government of Iraq or Kuwait is prohibited, except medical supplies and food provided for humanitarian purposes.

superceded in order to bring U.S. sanctions in compliance with the sanctions mandated by the United Nations Security Council. Prior to Security Council Resolution 661, the U.S. sanctions blocked both Iraqi and Kuwaiti assets but prohibited trade and restricted travel only with respect to Iraq. Executive Order 12,725 prohibited trade and restricted travel with Kuwait as required by Resolution 661.⁴³

The U.S. sanctions issued in response to Resolution 661 were imposed under the authority of IEEPA and the United Nations Participation Act ("UNPA").⁴⁴ The UNPA authorizes the President to impose sanctions against a third nation in accordance with any mandatory decision by the United Nations Security Council.⁴⁵

4. United States persons are prohibited from any dealing related to property of Iraqi or Kuwaiti origin exported from Iraq or Kuwait after August 6, 1990 or intended for exportation to or from Iraq or Kuwait.

5. United States persons are prohibited from any transaction related to travel to or within Iraq or Kuwait except as necessary to effect a departure from Iraq or Kuwait and except U.S. Government, United Nations and journalistic activities and are prohibited from any transaction related to the provision of transportation to or from the U.S. by an Iraqi or Kuwaiti person.

6. United States persons are prohibited from performance of any contract in support of an industrial, commercial, public utility or government project in Iraq or Kuwait.

7. United States persons are prohibited from committing or transferring funds, or other financial or economic resources, to the Governments of Iraq or Kuwait or to any person in Iraq or Kuwait.

Exec. Order No. 12,725, 55 Fed. Reg. 33,091 (1990); Exec. Order No. 12,724, 55 Fed. Reg. 33,089 (1990).

43. 55 Fed. Reg. 33,091 (1990).

44. Pub. L. No. 79-264, ch. 583, 59 Stat. 619 (1945) (22 U.S.C. §§ 287-287(e) (1988)).

45. Section 5 of the Act authorizes the President to apply, pursuant to a mandatory decision of the Security Council under article 41, economic sanctions and severance of communications with respect to a target state. 22 U.S.C. § 287c(a) (1988). It does not include severance of diplomatic relations, a possible sanction under article 41, since this was viewed as an inherent constitutional power of the President not requiring a statutory authorization.

The authority granted to the President by the U.N. Security Council pursuant to article 41 of the U.N. Charter, is to:

investigate, regulate, or prohibit, in whole or in part, economic relations or rail, sea, air, postal, telegraphic, radio, and other means of communication between any foreign country or any national thereof or any person therein and the United States or any person subject to the jurisdiction thereof, or involving any property subject to the jurisdiction of the United States.

22 U.S.C. §287c(a) (1988); U.N. CHARTER ART. 41.

Although these authorities are quite broad they are similar to the authorities granted to the President in section 5(b) of the Trading With the Enemy Act and the

2. Assets Control Regulations

The Department of the Treasury, Office of Foreign Assets Control ("OFAC") administers the Kuwaiti Assets Control Regulations⁴⁶ ("KACR") and the Iraqi Sanctions Regulations⁴⁷ ("ISR"). These regulations are promulgated pursuant to the executive orders under which all property is blocked and imports, exports, transactions and travel are regulated. The prohibitions on imports, exports, transactions and travel in the KACR were lifted with the withdrawal of Iraqi forces from Kuwait⁴⁸ and the adoption of United Nations Security Council Resolution 686.⁴⁹ Imports, exports, transaction and travel with Iraq are still generally prohibited.

The KACR and the ISR block assets by prohibiting the transfer of any property, or any interest in property, of the Governments of Kuwait or Iraq which is within the United States or in the possession or under the control of a U.S. person.⁵⁰ The prohibition on transfers of property includes securities,⁵¹ goods transshipped through the United States,⁵² and funds paid for U.S. exports of goods previously shipped to Kuwait or Iraq.⁵³ Unauthorized transactions are null and void and unenforceable.⁵⁴ In addition, financial assets which may not be transferred must be kept in a blocked, interest-bearing account.⁵⁵

International Emergency Economic Powers Act. 50 U.S.C. § 1701 (1982 & Supp. V 1987).

46. 55 Fed. Reg. 49,856 (1990) (to be codified at 31 C.F.R. pt. 570) [hereinafter "KACR"].

47. 56 Fed. Reg. 2,112 (1991) (to be codified at 31 C.F.R. pt. 575) [hereinafter "ISR"].

48. 56 Fed. Reg. 10,356 (1991).

49. U.N. SCOR (2978th mtg.), U.N. Doc. S/RES/686 (1991). Resolution 686 requests United Nations member states to "take all appropriate action to cooperate with the government and people of Kuwait in the reconstruction of their country." *Id.*

50. The term "U.S. person" means any United States citizen or person within the United States and any organization formed under the laws of the United States, including the organization's foreign branches. *KACR*, *supra* note 46, at 49,861 (to be codified at 31 C.F.R. § 570.321); *ISR*, *supra* note 47, at 2,116 (to be codified at 31 C.F.R. § 575.321).

51. *KACR*, *supra* note 46, at 49,858 (to be codified at 31 C.F.R. § 570.201(b)); *ISR*, *supra* note 47, at 2,114 (to be codified at 31 C.F.R. § 570.201(b)).

52. *KACR*, *supra* note 46, at 49,861 (to be codified at 31 C.F.R. § 570.409); *ISR*, *supra* note 47, at 2,117 (to be codified at 31 C.F.R. § 575.409).

53. *KACR*, *supra* note 46, at 49,861 (to be codified at 31 C.F.R. § 570.404); *ISR*, *supra* note 47, at 2,117 (to be codified at 31 C.F.R. § 575.404).

54. *KACR*, *supra* note 46, at 49,858 (to be codified at 31 C.F.R. § 570.202); *ISR*, *supra* note 47, at 2,114 (to be codified at 31 C.F.R. § 575.202).

55. *KACR*, *supra* note 46, at 49,858 (to be codified at 31 C.F.R. § 570.203); *ISR*,

The KACR and the ISR establish several general licenses⁵⁶ for certain transfers of property. Kuwaiti and Iraqi funds may be transferred to blocked accounts held in the name of their respective governments in U.S. financial institutions,⁵⁷ including receipt of payments and transfers among blocked accounts for purposes of investment or reinvestment.⁵⁸ Transfers may also be used to satisfy obligations under a banker's acceptance⁵⁹ and under certain contracts which were entered into before August 2, 1990. Such activities may include those which involve foreign exchange, securities, currency and interest rate transactions, commodity option, swap and futures transactions.⁶⁰ Transfers may also be made to satisfy obligations to U.S. persons arising before August 2, 1990.⁶¹ Specific licenses⁶² may be obtained on a case-by-case basis for payments for goods and services exported to Kuwait prior to August 2, 1990.⁶³

As a result of Security Council Resolution 686, exports and imports to and from Kuwait are not restricted under the KACR.⁶⁴ Since Kuwaiti assets remain blocked, however, the import or export transaction may not involve a debit to a blocked account unless otherwise au-

supra note 47, at 2,114 (to be codified at 31 C.F.R. § 575.203).

56. The term "general license" means any transaction or activity authorized by the Kuwait Assets Control Regulations. *KACR*, *supra* note 46, at 49,859 (to be codified at 31 C.F.R. § 570.305); *ISR*, *supra* note 47, at 2,115 (to be codified at 31 C.F.R. § 575.305).

57. The term "U.S. financial institution" includes depositor institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contact and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing." *KACR*, *supra* note 46, at 49,860-61 (to be codified at 31 C.F.R. § 570.320); *ISR*, *supra* note 47, at 2,116 (to be codified at 31 C.F.R. § 575.320).

58. *KACR*, *supra* note 46, at 49,863 (to be codified at 31 C.F.R. § 570.503); *ISR*, *supra* note 47, at 2,118 (to be codified at 31 C.F.R. § 575.503).

59. *KACR*, *supra* note 46 (to be codified at 31 C.F.R. § 570.505); *ISR*, *supra* note 47, at 2,119 (to be codified at 31 C.F.R. § 575.505).

60. *KACR*, *supra* note 46 (to be codified at 31 C.F.R. § 570.504). The *ISR* does not contain a similar provision.

61. *KACR*, *supra* note 46, at 49,864 (to be codified at 31 C.F.R. § 570.506); *ISR*, *supra* note 47, at 2,119 (to be codified at 31 C.F.R. § 575.506).

62. The term "specific license" means any transaction or activity authorized by the OFAC pursuant to a written application. *KACR*, *supra* note 46, at 49,860 (to be codified at 31 C.F.R. § 570.316); *ISR*, *supra* note 47, at 2,116 (to be codified at 31 C.F.R. § 575.316).

63. *KACR*, *supra* note 46 (to be codified at 31 C.F.R. § 570.510); *ISR*, *supra* note 47, at 2,199-10 (to be codified at 31 C.F.R. § 575.510).

64. 56 Fed. Reg. 10,356 (1991) (to be codified at 31 C.F.R. § 570.522).

thorized by a general or specific license.⁶⁵ Exports of dual-use goods and technologies to Kuwait may be completed in accordance with the Export Administration Regulations⁶⁶ in the same manner as was permitted before the August 2, 1990 invasion. The prohibition on exports and imports to and from Iraq have not been similarly relaxed.⁶⁷

The Departments of State and Defense will certainly re-evaluate their policies concerning exports of defense articles, defense services and technical data to the Middle East. The Department of State is likely to proceed on a more conservative basis with respect to these inherently military exports.⁶⁸

The Administration's timely removal of the export embargo on dual-use goods and technologies is particularly noteworthy since these exports are integral to the rebuilding of Kuwait and are necessary for U.S. contractor participation in the rebuilding plan. The Department of Commerce reported, based on Kuwaiti Embassy figures, that nearly "300 contracts worth more than \$500 million [were] awarded for the first emergency stage of the Kuwaiti rebuilding plan, with more than 70% of the contracts going to U.S. firms."⁶⁹ Kuwait could spend as much as \$100 billion before the rebuilding plan is completed.⁷⁰

IV. EMERGING PROLIFERATION CONTROLS ON MISSILE TECHNOLOGY AND NUCLEAR, BIOLOGICAL AND CHEMICAL WEAPONS

The Administration has linked Saddam Hussein's use of chemical weapons against his own citizens, his use of SCUD missiles against civilian populations, and the specter of nuclear, biological and chemical weapons to a realization of the dangers proliferation poses.⁷¹ This reali-

65. *Id.*

66. 15 C.F.R. pts. 768-99.

67. The ISR prohibits importation and dealings in Iraqi-origin goods and services. *ISR*, *supra* note 47, at 2,114 (to be codified at 31 C.F.R. § 575.204). This includes transshipment of Iraqi-origin goods through the United States. *Id.* at 2,117 (to be codified at 31 C.F.R. § 575.409). Exports of goods, technologies and services from the United States to Iraq are also prohibited. *Id.* at 2,114-5 (to be codified at 31 C.F.R. § 575.205). Reexports through third countries are similarly prohibited if "subject to U.S. jurisdiction." *Id.*

68. The Department of State revoked or suspended all licenses for exports and reexports of defense articles, technical data and defense services to Iraq and Kuwait after the August 2, 1990 invasion. 55 Fed. Reg. 31,808 (1990).

69. *Commerce Opens Clearinghouse to Help U.S. Firms Seeking Kuwaiti Contracts*, 55 FED. CONTRACTS REP. 311 (1991).

70. *Id.* at 312.

71. White House press release (March 8, 1991). Many experts believe that Iraq will possess nuclear weapons in the near future.

zation has focused attention of the Bush Administration on the appropriate measures for implementing proliferation controls which will most effectively reduce the likelihood of prospective threats from Iraq and other nations.⁷² Rejecting a legislation solution proposed by Congress, the Administration has implemented controls through Department of Commerce regulations.

A. *Reauthorization of the Export Administration Act*

The Congress proposed implementing unilateral proliferation controls and sanctions against Iraq in a bill to reauthorize the Export Administration Act ("EAA"). The "Export Amendments Bill"⁷³ was pocket-vetoed by the President, and it has since been re-introduced by the Senate.

The Export Amendments Bill essentially codified the COCOM⁷⁴ agreement negotiated by the Administration in June, 1990, at the High Level Meeting in Paris with respect to a license-free COCOM zone,⁷⁵

72. Although enhanced proliferation controls have been under consideration for over a year, they have taken on a new urgency since the invasion of Kuwait. Auerbach, *U.S. Pushing Curbs on Exports of Sensitive Materials*, Wash. Post, Nov. 1, 1990, at C1, col. 1. Iraq is a test-case for how the world will deal with proliferation issues in the post-Cold War era. *Perspectives on the Persian Gulf*, L.A. Times, Dec. 29, 1990, at B7, col 1.

73. The Omnibus Export Amendments Act of 1990, H.R. 4653, 101st Cong., 2nd Sess., CONG. REC. S1,984-2,004 (daily ed. Feb. 20, 1991) (hereinafter "*Export Amendments Bill*"). The Export Amendments Bill was a compromise between very distinct House and Senate bills. While the Senate bill was better received by the Administration, current and former administration officials testifying before the conference committee sharply criticized the House bill. Richard Perle, a former Senior Department of Defense Official under the Reagan Administration, testified that the House bill was adopted "almost certainly with little or no thought of its implications for the sale of sensitive technology abroad" and called the bill the "Saddam Hussein Sensitive Technology Endowment Program." *President Renews Existing Export Rules as Congress Prepares Reauthorization Law*, 7 Int'l Trade Rep. (BNA) 1500, 1501 (Oct. 3, 1990).

74. COCOM is the Coordinating Committee on Multilateral Export Controls and is comprised of delegations from the following countries: Australia, Belgium, Canada, Denmark, the Federal Republic of Germany, France, Greece, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey, the United Kingdom and the United States of America. Established in 1949, COCOM coordinates uniform export controls among the participating countries for their mutual security. COCOM is not based on formal treaty, but rather on an informal understanding among the countries.

75. The Exports Amendments Bill provided that a validated license could not be required for the export or reexport of goods or technology to or from a COCOM member country or a 5(k) country (e.g., Switzerland and Finland). *Export Amendments*

the core list exercise⁷⁶ and favorable treatment for emerging democracies in Eastern Europe.⁷⁷ The mandatory sanctions on proliferation control violators and the Iraqi sanctions in the Export Amendments Bill were of particular concern to the Administration.

Under the proposed legislation, the Administration was to pursue multilateral missile technology and chemical and biological controls with such groups as the Missile Technology Control Regime, the Australia Group, the Nuclear Suppliers' Group and the 40 nation Conference on Disarmament in Geneva.⁷⁸ The Export Amendments Bill provided for unilateral controls involving development of a list of goods and technologies for missile technology⁷⁹ and chemical and biological weapons "that would directly and substantially assist a foreign government or group in acquiring the capability to develop, produce, stockpile, or deliver chemical or biological weapons."⁸⁰ More importantly, the Export Amendment Bill imposed mandatory sanctions on U.S. and foreign persons exporting such controlled goods or technologies without

Bill, supra note 74, at S1,985 § 103. This exemption from the validated license requirement was not to apply to exports of commodities controlled by special multilateral arrangement (e.g., commodities controlled for proliferation reasons) or exports to unreliable end-users. *Id.* The exemption also was not to apply to reexports to countries other than a COCOM member and 5(k) countries for certain sensitive commodities (e.g., supercomputers and surreptitious listening devices). *Id.* As a precondition to a COCOM member or 5(k) country being eligible for the exemption, the proposed legislation required that the country adopt measures necessary to achieve a common standard of export controls. *Id.*

76. At the High Level Meeting, COCOM agreed to immediately remove 30 products from its control list and to control even fewer products in 1991 under a "core list." The Export Amendments Bill mandated that a validated license could not be required for the export of the affected commodities and that the commodities could not be controlled unless COCOM agrees to place the commodities back on its list, excluding commodities controlled for proliferation reasons. *Export Amendments Bill, supra* note 74, at S 1,986 § 107. The proposed legislation also required that the Administration report to Congress on the implementation of a core list. *Id.*

77. The Export Amendments Bill established three levels of treatment for the Eastern bloc: Controlled countries, controlled countries within the favorable consideration policy, and decontrolled countries. Under the proposed legislation, the Department of State was to propose that COCOM adopt a favorable consideration policy toward controlled countries which represent a lesser strategic threat and implement an effective export control system. *Export Amendments Bill, supra* note 74, at S1,986 § 106. It also provided that the President should seek agreement from COCOM to remove a country from the list of controlled countries if, in addition, the "country takes steps to reduce its offensive military capabilities and phase out its participation in the Warsaw Pact, including withdrawal of Soviet troops." *Id.*

78. *Id.* at S1,992, S1,996 (§§ 302, 402, 421).

79. *Export Amendment Bill, supra* note 74, at S1,992-94 (§ 302).

80. *Export Amendment Bill, supra* note 74, at S1,996 (§ 422).

authorization and on foreign countries developing or using controlled items in violation of international law.⁸¹

Although the Administration is committed to enhanced proliferation controls, it objected to the Bill's limitations on the President's discretionary power to set and change foreign policy, particularly in relation to the mandatory sanctions in the proposed legislation. National Security Advisor Brent Scowcroft advised the Congress of the Administration's concerns that the proposed legislation could undercut the President's discretion on "ongoing efforts to achieve necessary multilateral cooperation in limiting the transfer of missile technology."⁸² Scowcroft expressed further concerns regarding provisions requiring specific sanctions for a period of one year against countries which use chemical and biological weapons in violation of international law, and against foreign firms that assist these countries.⁸³ Scowcroft stated that the provisions would deprive the President of "adequate discretion" to negotiate the imposition and removal of sanctions.⁸⁴ Secretary of State James Baker also urged the Congress to adopt more flexible language concerning the sanctions against violators.⁸⁵

On similar grounds, the Administration further opposed the Export Amendments Bill because it codified the sanctions against Iraq.⁸⁶ Administration officials contended that the President's discretionary power to remove or alter sanctions would be limited.⁸⁷

B. The Bush Administration's Solution to the Proliferation Problem

On November 16, 1990, the President formally withheld his approval of the Export Amendments Bill.⁸⁸ The President supported the "principles and goals" of the proposed legislation, but found that it contained elements that "would undermine these objectives and [the Administration's] ability to act quickly, decisively, and multilaterally

81. *Id.* at S1,992-94, S1,996-99 (§§ 302, 423, 441, and 442).

82. *House, Senate Conferees Reach Agreement on Legislation to Extend Export Controls*, 7 Int'l Trade Rep. (BNA) 1607, 1608 (Oct. 24, 1990) [hereinafter *Legislation*].

83. *Id.*

84. *Id.*

85. *Id.* at 1609.

86. *Export Amendment Bill*, *supra* note 74, at S1,999-2001 (Title V).

87. *Legislation*, *supra* note 82.

88. Memorandum of Disapproval, 26 WEEKLY COMP. PRES. DOC. 1839 (Nov. 16, 1990).

at a time when [it] must be able to do so."⁸⁹ He also found that "[t]hese provisions unduly interfere with the President's constitutional responsibilities for carrying out foreign policy."⁹⁰ The President cited the unilateral sanctions on violators of the proliferation controls as the "major flaw" in the Export Amendments Bill.⁹¹ He found that the sanctions would "harm U.S. economic interests and provoke friendly countries."⁹²

Rather than approve the Export Amendment Bill, the President issued proliferation controls by executive order under the authority of IEEPA.⁹³ Executive Order 12,735 directs the Secretary of State to pursue multilateral efforts to stop the proliferation of chemical and biological weapons.⁹⁴ As under the Export Amendments Bill, the Executive Order directs the Secretaries of State and Commerce to develop a list of controlled goods and technologies.⁹⁵ The Executive Order prohibits the export of the controlled items except when destined for a country whose government has entered into a bilateral or multilateral agreement for the control of chemical and biological weapons with the United States.⁹⁶ The Secretary of State, at his discretion, may impose sanctions against U.S. persons, foreign persons and foreign countries violating the Executive Order.⁹⁷

On December 13, 1990, pursuant to the Executive Order, the Administration issued an initiative enhancing proliferation controls.⁹⁸ The initiative established an inter-agency review process—leading up through the sub-cabinet and cabinet levels—for export applications subject to foreign policy proliferation controls.⁹⁹ The initiative also set forth specific measures for stopping the spread of missile technology as well as nuclear, chemical and biological weapons.¹⁰⁰

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Chemical and Biological Weapons Proliferation*, Exec. Order No. 12,735, 55 Fed. Reg. 48,587 (1990).

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.* at 48,588.

98. *President Clears Export Control Initiatives, Computer Exports to Brazil, India, and China*, 7 Int'l Trade Rep. (BNA) 1914 (Dec. 19, 1990).

99. *Id.* at 1932.

100. Set forth below are the specific measures adopted by the President in the Proliferation Control Initiative:

1. The United States shall adopt worldwide export controls on 50 precursors for chemical weapons and shall urge all nations that manufacture these chem-

The enhanced proliferation control initiative will be fully implemented by amendment to the Export Administration Regulations. On March 13, 1991, the Department of Commerce published two interim rules and one proposed rule in accordance with the President's initiative.¹⁰¹ One interim rule requires that U.S. exporters obtain a validated license for exports of precursor chemicals that can be used in the production of chemical weapons to all destinations, except the Australia Group.¹⁰² The rule covers fifty chemicals which have been identified as chemical weapon precursors by the Australia Group.¹⁰³ This is a substantial increase from the eleven chemicals previously requiring a validated license.¹⁰⁴ Moreover, the precursors controlled by the interim rule are primarily used for non-weapon purposes.

The other interim rule requires that U.S. exporters obtain a validated license for exports of equipment and technical data related to the

icals to adopt equivalent controls.

2. Export licenses shall be required for proposed exports of potentially chemical-weapon-related industrial facilities, and related designs and technology.

3. Export licenses shall be required for any export destined for a publicly-listed company, ministry, project, or other entity that is engaged in activities of proliferation concern.

4. Export licenses shall be required when an exporter knows or is informed by the U.S. Government that a proposed export may be destined for a project of proliferation concern. (A similar regulation already applies to exports of possible nuclear-weapon concerns.)

5. Current regulations shall be supplemented by control lists of (i) dual-use equipment and technology related to chemical weapons, biological weapons, and missiles, and (ii) countries to which such equipment and technology shall be controlled.

6. Civil and criminal penalties shall be imposed upon U.S. citizens who knowingly participate in activities that promote the spread of missile technology and chemical weapons. (Similar penalties already apply in the areas of nuclear and biological weapons.)

Id. at 1933.

101. *Expansion of Foreign Policy Controls on Chemical Weapons Precursor*, 56 Fed. Reg. 10,756 (1991) (to be codified at 15 C.F.R. pts. 776, 799) [hereinafter *Precursor Rule*]; *Imposition of Foreign Policy Controls on Equipment and Technical Data Related to the Production of Chemical and Biological Weapons*, 56 Fed. Reg. 10,760 (1991) (to be codified at 15 C.F.R. pts. 770, 776, 778, 799) [hereinafter *Equipment Rule*]; *Imposition and Expansion of Foreign Policy Controls*, 56 Fed. Reg. 10,765 (1991) (to be codified at 15 C.F.R. pts. 771, 776, 778) [hereinafter *Proposed Rule*].

102. *Precursor Rule*, *supra* note 101, at 10,758 (to be codified at Supp. 1 to 799.2).

103. *Id.* at 10,756.

104. Prior to the *Precursor Rule*, only eleven chemical precursor were controlled under ECCN 5798F. *Id.*

production of chemical and biological weapons when destined for countries in the Middle East or Southwest Asia or certain other countries.¹⁰⁵ A broad range of goods and technologies are controlled under this rule, including pumps and valves, media for the growth of microorganisms, and toxic gas monitoring systems.¹⁰⁶ These goods were not controlled prior to the interim rule.

The proposed rule will, among other things, require that U.S. exports obtain a validated license for *any* export when the exporter "knows" the good or technology will be used in the design, development, production or use of missiles or chemical or biological weapons in connection with a restricted project.¹⁰⁷ The Department of Commerce is considering adopting a standard under which an exporter will be deemed to "know" of a circumstance or result. The standards under consideration are when a U.S. person "is aware that such circumstance exists, or that such result is substantially certain to occur," or when a U.S. person "has a firm belief that such circumstance exists, or that such result is substantially certain to occur."¹⁰⁸ The proposed rule will also restrict participation by U.S. persons in the construction of foreign plants that produce chemicals.¹⁰⁹

The Administration's approach to the proliferation problem is similar to that of the Export Amendments Bill: Unilateral proliferation controls are implemented while a high priority is placed on securing multilateral controls. The fundamental difference, however, is that the Administration retains discretionary power to negotiate the imposition and removal of sanctions. Under the Administration's approach, compliance with multilateral proliferation agreements can be achieved, for example, by offering to remove sanctions in exchange for compliance. The one-year mandatory sanctions contemplated by the congressional approach do not lend themselves to this type of bargaining.

Industry opponents of enhanced proliferation controls are concerned that the controls will not be implemented multilaterally.¹¹⁰ They argue that controls would affect exports only from U.S. companies,

105. *Equipment Rule*, *supra* note 101, at 10,762 (to be codified at 15 C.F.R. § 776.20(a)(1)).

106. *Id.* at 10,760.

107. *Proposed Rule*, *supra* note 101, at 10,770 (to be codified at 15 C.F.R. § 778.9).

108. *Proposed Rule*, *supra* note 101.

109. *Id.* at 10,770 (to be codified at 15 C.F.R. § 778.9).

110. *Industry Attacks U.S. Plan to Impose Unilateral Curbs on Proliferation Exports*, 7 Int'l Trade Rep. (BNA) 1697 (Nov. 7, 1990); *U.S. Pushing Curbs on Exports of Sensitive Materials*, Wash. Post, Nov. 1, 1990, at C1 [hereinafter *Exports*].

particularly companies in the chemical industry.¹¹¹ Industry and Administration officials argue that "export controls work only if they are enforced by a multilateral agreement, such as [the COCOM agreements] that set Cold War curbs on sales to the Soviet Union and its Eastern Bloc satellites."¹¹²

C. *Emerging Multilateral Proliferation Controls*

It is anticipated that at least some of the proliferation controls advocated by the Bush administration will be implemented by multilateral agreement in 1991, although the multilateral controls will not be through COCOM. The COCOM Executive Committee, which is comprised of officials at the deputy assistant secretary level, tentatively decided at its November, 1990 meeting in Paris that it should not broaden its mandate to include proliferation controls.¹¹³ COCOM is comprised of Western nations with an aim toward containing the East bloc, an objective which remains viable at least through 1991. Because proliferation controls require the cooperation of the Soviet Union and the People's Republic of China to be effective, it would be a conflict of interests for COCOM to assume the responsibility of administering multilateral proliferation controls.

It is more likely that the Missile Technology Control Regime, the Australia Group, and the London Nuclear Suppliers Group, controlling missile technology, chemical and biological weapons and nuclear technology, respectively, will each expand their missions to accommodate multilateral proliferation controls.¹¹⁴ The United States is currently seeking the agreement of all Australia Group governments to adopt controls equivalent to the interim rules which were issued by the Department of Commerce.¹¹⁵ The Administration has announced that it has "initiated vigorous efforts to obtain allied support for chemical and biological weapon export controls in the Australia Group, missile export controls in the Missile Technology Control Regime, and nuclear export controls through consultation with major nuclear suppliers."¹¹⁶

Preliminary observations concerning the formation of a multilat-

111. As much as \$250 billion dollars worth of U.S. exports could be affected. *Exports, supra* note 110.

112. *Id.*

113. *Plans Afoot to Broaden Non-Proliferation Controls, But Not Through COCOM*, 8 Inside U.S. Trade, Nov. 30, 1990, at 1.

114. *Id.* at 2.

115. *Precursor Rule, supra* note 101, at 10,756; *Equipment Rule, supra* note 101, at 10,760.

116. White House press release (March 8, 1991).

eral proliferation control regime indicate that it will be inherently different than COCOM. While COCOM's mission was to contain the East bloc, the proliferation regime's mission will be to control regional powers and state-sponsored terrorism through their ability to obtain advanced weapons and technologies of proliferation concern.¹¹⁷ Moreover, the United States and the regime will not be able to influence all suppliers of controlled goods and technologies, as they did under COCOM.¹¹⁸ Finally, with the end of the Cold War, the regime can now include the requisite membership of the Soviet Union and the People's Republic of China.¹¹⁹

The prospect of one or more control organizations joining together presents issues of coordinating the multilateral effort. The objective of the regime will be to assimilate all nations in the forbearance or controlled use of missile technology and nuclear, chemical and biological weapons. However, as the number of participants increases, divergent views will become more prevalent, creating difficulties in identifying targets and defining mechanisms.¹²⁰ On the other hand, expansive membership in the regime will increase the impact of sanctions.¹²¹ Although some advocate a single organization to manage and coordinate proliferations controls, there are practical problems in negotiating controls with a large number of states. Rather, a more reasoned approach is to expand the missions of the Missile Tehnology Control Regime, the Australia Group and the Nuclear Suppliers Group and to establish new channels of communication between the organizations.¹²²

V. CONCLUSION

The Iraqi invasion of Kuwait has set a precedent for world-wide cooperation in imposing economic sanctions through the United Nations. The sanctions imposed against Iraq and against Kuwait for its protection represent, for the first time, truly world-wide sanctions.

Nonetheless, the more significant and far reaching effect of the invasion may be the emergence of multilateral proliferation controls. Although enhanced proliferation controls on missile technology and nuclear, chemical and biological weapons have been under consideration

117. NATIONAL ACADEMY OF SCIENCES, FINDING COMMON GROUND 15 (1991).

118. *Id.* at 130. COCOM members were the suppliers of the control goods and technologies. Under the control regime, however, some suppliers will not be members of the regime, but rather, the target of the regime.

119. *Id.* at 2.

120. *Id.* at 130.

121. *Id.*

122. *Id.* at 232.

by the Bush Administration for over a year, the Iraqi crisis has created a sense of urgency to immediately implement unilateral controls. The invasion is likely to have a similar impact on a multilateral level. The Missile Technology Control Regime, the Australia Group and the London Nuclear Suppliers Group are best suited to undertake the multilateral proliferation control initiative. Most certainly, the United Nations' unprecedented use of multilateral sanctions and the emerging multilateral proliferation controls will be instrumental in the alignment of a new world order.

