

# 15. Non-cooperative responses to proliferation: multilateral dimensions

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## I. Introduction

In spite of the strong legal and political norms against their further proliferation, it has long been strongly suspected that new states have acquired nuclear, chemical and biological weapons (NBC).<sup>1</sup> In regard of ballistic or cruise missiles, similar legal and political norms are lacking except in cases where such missiles are acquired as delivery systems for prohibited weapons.<sup>2</sup>

The primary objective of policy for the great majority of states with regard to NBC weapons is to ensure the elimination of existing weapons and to prevent new weapons from being developed and produced.<sup>3</sup> Ideally, this would be achieved through a verifiable commitment by governments for NBC disarmament. Recent events have raised awareness of the continued need for a comprehensive disarmament agenda but also highlighted (a) that no comprehensive framework is yet in place, and (b) that there are significant barriers to creating such a framework.

Throughout 1998 disputes over the implementation of United Nations Security Council resolutions intended to eliminate Iraq's NBC weapon programmes, among other things, led to three separate crises in which the use of force was threatened. At the end of 1998 the United Nations Special Commission on Iraq (UNSCOM) was unable to confirm that Iraq's chemical, biological and missile programmes had been eliminated.<sup>4</sup> In May 1998 there was confirmation of the nuclear weapon programmes in India and Pakistan when these states conducted a series of nuclear explosions. In August 1998 the United States responded militarily when a state (Sudan) was thought to be assisting a non-state armed group to acquire chemical weapons (CW) for use against the USA.<sup>5</sup>

<sup>1</sup> I.e., states other than those that have themselves acknowledged possession of such weapons.

<sup>2</sup> Weapons, equipment or means of delivery designed to use biological agents or toxins for hostile purposes or in armed conflict are included as part of the definition of a biological weapon in Article I of the Biological and Toxin Weapons Convention. Missile delivery systems for chemical warfare agents form part of the definition of a chemical weapon contained in Article II of the Chemical Weapons Convention.

<sup>3</sup> Cooperative approaches to NBC disarmament and non-proliferation and the impact of the nuclear tests by India and Pakistan on those processes are reported on in chapters 9 (implications of the tests for the nuclear capabilities of India and Pakistan) and 12 (implications for nuclear arms control and non-proliferation) and appendix 12B (their technical characteristics) of this volume.

<sup>4</sup> UNSCOM is discussed in chapters 3 and 13 in this volume.

<sup>5</sup> The allegation and the US response to it are described in chapter 13 in this volume.

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Thus, while there is widespread agreement that disarmament and non-proliferation are desirable objectives, the decisions by Iraq not to comply with its obligations under the terms of the ceasefire agreed in 1991 and the nuclear tests conducted by India and Pakistan raise the question how to respond to proliferation.

This chapter examines the global, multilateral and national responses to selected proliferation events in 1998 with a focus on whether and how far these responses include the threat or actual use of force, sanctions or technology denial. The review is not a comprehensive survey of allegations related to potential NBC weapon programmes of concern.<sup>6</sup> The emphasis is placed on those proliferation events which were the main focus of attention from the international community. In another case, the violations of North Korea's commitments under the 1968 Treaty on the Non-Proliferation of Nuclear Weapons (NPT), coercive measures were considered during 1994. However, the current approach towards North Korea's nuclear programme is not based on sanctions.<sup>7</sup>

### **A categorization of non-cooperative responses to proliferation events**

There were several responses to proliferation events. Those that took place within the framework of existing disarmament and non-proliferation treaties are considered elsewhere in this volume. While some of those treaties include provisions for responding to non-compliance—Article XII of the 1993 Chemical Weapons Convention (CWC) and Article V of the 1996 Comprehensive Nuclear Test-Ban Treaty (CTBT)—whether the treaty provisions will be adequate to manage a specific case of non-compliance has not been tested.<sup>8</sup> Under the 1972 Biological and Toxin Weapons Convention (BTWC) any party to it may lodge a complaint with the UN Security Council if it believes that any other party is acting in breach of its obligations under the convention.

Since the existing enforcement provisions in treaties are formulated in general terms which need interpretation and since not all treaties contain such provisions, the UN Security Council is likely to be involved in handling serious cases of non-compliance.<sup>9</sup>

An additional question remains how to respond to actions that challenge the norms and principles underpinning the treaty regimes taken by states that are not parties to those treaties. It could be added that for some governments preventing NBC weapon proliferation has such a high priority that, if evidence exists of an active weapon programme in a state that is party to an existing

<sup>6</sup> Alleged use or proliferation of biological and chemical weapons is discussed in chapter 13 in this volume.

<sup>7</sup> They are described in chapter 12 in this volume.

<sup>8</sup> Neither the NPT nor the BTWC contain provisions on how to respond in cases of non-compliance—although a process is under way to add compliance and verification mechanisms to the BTWC. The initiative to achieve a protocol to strengthen the BTWC is discussed in chapter 13 in this volume. It should also be pointed out that the CTBT has not yet entered into force. The CTBT is discussed in chapter 12 in this volume.

<sup>9</sup> The exception may be in the case of alleged breaches of the CWC, which might in theory be handled internally within the framework of the treaty regime.

treaty, actions for dealing with non-compliance may be considered an inadequate response in the face of the threat posed to international security.

While historically states have taken unilateral military action to deny other states certain military capabilities, in the 1990s multilateral responses to proliferation have become possible.<sup>10</sup> Whereas the cold war would have made such approaches difficult if not impossible, in January 1992 the UN Security Council (at its only meeting conducted at the level of heads of state and government) stated that the proliferation of weapons of mass destruction (WMD) constitutes a threat to international peace and security.<sup>11</sup> This was repeated in two statements from the Security Council President (on 14 May and 29 May 1998) and also contained in Security Council Resolution 1172 of 6 June 1998.<sup>12</sup>

The 1992 statement by the Security Council and its subsequent reaffirmation following the nuclear tests by India and Pakistan are potentially very important. Once the Security Council has determined the existence of a threat to the peace it may decide on measures to be taken in accordance with Articles 41 and 42 of the UN Charter in order to maintain or restore international peace and security.

Under Article 41 of the Charter, the Security Council may decide to impose economic sanctions and call upon the members of the United Nations to apply these measures. Under Article 42 of the Charter the Security Council may, if it considers that sanctions would be inadequate, 'take such action by air, sea or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea or land forces of Members of the United Nations'.

In future, multilateral responses to proliferation may not be confined to the UN Security Council. In 1994, at their meeting in Istanbul, NATO defence ministers agreed on a Policy Framework on Proliferation of Weapons of Mass Destruction in which they stated that the proliferation of NBC weapons and their means of delivery 'can pose a direct military risk to the member States of the Alliance and to their forces'.<sup>13</sup> The document acknowledged that, in spite of the best efforts of the international community, proliferation might occur. Consequently it was felt that the alliance must address the military capabilities

<sup>10</sup> E.g., in 1981 Israel made a pre-emptive attack on the Osiraq nuclear facility in Iraq, arguing that this was a defensive action given the risk that Iraq would engage in genocide if equipped with nuclear weapons. Som, V., 'The Israeli raid on Osiraq: an analysis', *Indian Defence Review*, vol. 3 (Dec. 1997), pp. 65–69.

<sup>11</sup> The responsibility of the Security Council in the maintenance of international peace and security, Note by the President of the Security Council, UN document S/23500, 31 Jan. 1992.

<sup>12</sup> Statement by the President of the Security Council, 14 May 1998, UN document S/PRST/1998/12; Statement by the President of the Security Council, 14 May 1998, UN document S/PRST/1998/12; and UN Security Council Resolution 1172, 6 June 1998. Whereas the acronym NBC describes a technical characteristic of specific weapon categories, the acronym WMD describes the effect of use of weapon categories. It is sometimes disputed that chemical weapons have the capacity to cause mass destruction. Except in cases where there is a direct quotation from a document, the term NBC weapons is used in this chapter.

<sup>13</sup> 'Alliance Policy Framework on Proliferation of Weapons of Mass Destruction', NATO Press Release M-NAC-1(94)45, 9 June 1994. This document and other NATO statements are available at URL <[http://www.sipri.se/projects/expcon/other\\_documents.htm](http://www.sipri.se/projects/expcon/other_documents.htm)>.

needed 'to discourage WMD proliferation and use, and if necessary, to protect NATO territory, populations and forces'.

By December 1998 members of the alliance agreed to evaluate their defence posture to ensure that they could 'succeed in the full range of missions that they might have to face despite the threat of use, or actual use, of chemical or biological weapons'.<sup>14</sup> Statements by Javier Solana, the Secretary General of NATO, made clear that responding to NBC proliferation formed part of the NATO Strategic Concept being prepared at the end of 1998. However, it was unclear whether this response would be confined to defending against the possible use of NBC weapons against the territory or forces of allies, or whether the concept would take in other types of response to proliferation.<sup>15</sup>

A range of instruments have been considered to exert pressure on states believed to be acquiring NBC weapons. In February 1998 military pressure from a group of states led by the USA played a part in resolving the crisis over UNSCOM inspections in Iraq. Although this coalition of states made it clear that they would prefer not to use force, the steps necessary to permit that option were taken.<sup>16</sup>

Apart from military pressure it is also possible to deny a state believed to have an active NBC weapon programme access to something that it desires but lacks—such as finance or technology.

The impact and effectiveness of economic sanctions as an instrument of policy have recently been the subject of extensive analysis, reflecting their increased use after the end of the cold war.<sup>17</sup> Sanctions have been applied since the mid-1990s for a wide range of reasons including conflict resolution, promotion of democracy and human rights.<sup>18</sup> However, with some important exceptions, notably Iraq, they have not been applied as an instrument of non-proliferation.

<sup>14</sup> Final Communiqué from the North Atlantic Council in Defence Ministers Session, 17 Dec. 1998, Press Communiqué M-NAC-D(98)152, Brussels, 17 Dec. 1998.

<sup>15</sup> At the meeting of NATO foreign ministers in Dec. 1998 US Secretary of State Madeleine Albright stated her view that the alliance 'needs to view the WMD issue not only in a defense context, but also as a political challenge that requires a more comprehensive response'. US Department of State, Secretary of State Madeleine K. Albright, 'Statement to the North Atlantic Council', Office of the Spokesman, Brussels, 8 Dec. 1998, URL <<http://secretary.state.gov/www/statements/1998/981208.html>>.

<sup>16</sup> 'We have always stressed that we want to explore all diplomatic avenues before any military action is taken . . . Any diplomatic initiative that can achieve our objectives is one that we would support. Let us be clear about those objectives though; the objective must be effective inspection by UNSCOM that stops Saddam Hussein acquiring chemical and biological weapons. If there is a prospect that a visit by Kofi Annan can secure that then we would support his visit.' Extract from a 16 Feb. 1998 doorstep interview by the British Foreign Secretary Robin Cook. Foreign & Commonwealth Office, London, 'Cook's comments on Iraq', URL <[http://www.fc.gov.uk/text\\_only/news/newstext.asp?262](http://www.fc.gov.uk/text_only/news/newstext.asp?262)>.

<sup>17</sup> Pape, R. A., 'Why economic sanctions do not work', *International Security*, vol. 22, no. 2 (fall 1997); Elliott, K. A., 'The sanctions glass: half full or completely empty?', *International Security*, vol. 23, no. 1 (summer 1998); Baldwin, D. A., 'Evaluating economic sanctions', *International Security*, vol. 23, no. 2 (fall 1998); and Szasz, P., 'The law of economic sanctions', eds M. Schmitt and L. Green, *The Law of Armed Conflict Into the Next Millennium* (Naval War College: Newport, R.I., 1998).

<sup>18</sup> For surveys see *Sanctions: Do They Work?*, a special issue of the *Bulletin of Atomic Scientists*, Nov. 1993; Hendrickson, D. C., 'The democratist crusade: intervention, economic sanctions and engagement', *World Policy Journal*, vol. 11, no. 4 (winter 1994/95); Conlon, P., 'The UN's questionable sanctions practices', *Aussenpolitik*, vol. 46, no. 4 (1995); and 'The costs and benefits of economic sanctions', *Structures of World Order: Proceedings of the 89th Meeting of the American Society of International Law*, New York, 5–8 Apr. 1995.

Once the Security Council has identified an act of aggression or a threat to international peace or security, international sanctions may be applied under Article 41 of the UN Charter, which states that: ‘The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations’.

In 1998 the readiness of some states to use sanctions was reaffirmed when the five permanent members (P5) of the Security Council met in the wake of the nuclear tests by India and Pakistan. However, that meeting also underlined that the P5 could not agree on a set of measures beyond an expression of regret and condemnation of the tests and a call for both India and Pakistan to join existing cooperative arms control and disarmament processes.

Apart from military pressure and sanctions, another instrument which is used to interrupt weapon programmes of concern are export controls applied by those suppliers with industrial and technological capacities that could contribute to the development of NBC weapons.

Some multilateral responses based on export and import controls depend on cooperation among states. The parties to the CWC cooperate to manage national export and import controls in ways that should prevent legitimate trade from contributing to illegal weapon programmes. Cooperation of this kind is outside the direct scope of this chapter—although the success of cooperative exercises will certainly have an indirect impact on the perceived need for approaches that do not depend on cooperation.<sup>19</sup>

Export controls applied to civilian technologies that have potential applications in NBC weapons are different from economic sanctions. Export controls are not applied in order to modify the behaviour of the target state through coercion. Instead, they seek to prevent transfers which contribute to programmes of concern and do not exclude other forms of trade.<sup>20</sup> The authorities of the exporter are responsible for ensuring that civilian technologies are not to be used for an unauthorized end-use or transferred to an unauthorized end-user. In gaining this assurance the cooperation of importers is welcome. However, export controls do not depend on the cooperation of importers and they exist to meet the foreign and security policy requirements of exporters.

This chapter surveys events in 1998 in three areas: the use of force to eliminate possession, economic sanctions and non-proliferation export controls.

<sup>19</sup> See chapter 13 in this volume.

<sup>20</sup> In some cases it can be argued that export controls have the same effect as sanctions. E.g., the demand for full-scope International Atomic Energy Agency (IAEA) safeguards as a condition for the supply of controlled items by members of the Nuclear Suppliers Group (NSG) means that 3 countries—India, Israel and Pakistan—may not buy civilian items (e.g., light-water nuclear power reactors) from NSG-participating states.

## II. Iraq: sanctions and use of force as instruments of disarmament and non-proliferation

Evaluating the use of coercive measures to eliminate Iraq's programmes to develop NBC weapons and related delivery systems is complicated by the fact that disarmament and non-proliferation are only one part of a series of unresolved problems between Iraq and the United Nations. A web of interlocking UN Security Council resolutions provide the framework for coercive actions against Iraq, but these resolutions address a wide range of issues other than disarmament and non-proliferation.<sup>21</sup> Although Iraq has committed itself to comply with these resolutions, it did not do so spontaneously but as a condition of ending the military operations of Desert Storm.<sup>22</sup>

Similarly, the actions taken against Iraq—including sanctions and the use of force—do not have a single objective. As well as ensuring that Iraq does not have and will not develop NBC weapons and related missile delivery systems, these actions are also intended to confirm that the United Nations has the will and capacity to implement its decisions and to ensure that Iraq will not in future represent a serious threat to international peace and security.<sup>23</sup>

The objectives of the military operations undertaken in December 1998 by the US and British armed forces were to diminish and degrade Iraqi President Saddam Hussein's military capability. Attacks focused on air defence systems, the command and control system for the Iraqi armed forces, missile production capability, and systems which could be used for chemical and biological warfare. In addition, the special Republican Guard organization—considered to be the elite of the Iraqi armed forces and involved in the NBC weapon programme—was a target for attacks.<sup>24</sup>

Economic sanctions against Iraq may be grouped into two sanctions regimes. The first has its origins in the Iraqi invasion of Kuwait, which had its basis in financial and territorial issues.<sup>25</sup> Diplomatic attempts to resolve these issues were ineffective, and on 2 August 1990 Iraqi troops invaded Kuwait.<sup>26</sup>

In response to requests from Kuwait and the USA, the Security Council convened shortly after the invasion and, acting under Chapter VII, Articles 39 and 40 of the UN Charter, adopted Resolution 660 which condemned the Iraqi

<sup>21</sup> Leuridijk, D. A. and Siekmann, R. C. R., 'The threat or use of force in a unipolar world: the Iraq crisis of winter 1997–98', *International Peacekeeping*, Jan.–Apr. 1998, pp. 63–76.

<sup>22</sup> SIPRI, 'Iraq: the UNSCOM experience', *Fact Sheet*, Oct. 1998, available at URL <<http://www.sipri.se/pubs/Factsheet/unscom.html>>.

<sup>23</sup> Foreign & Commonwealth Office, London, 'Vigilance vindicated by results: Foreign Secretary's article in "The Times"', 25 Feb. 1998, URL <[http://www.fco.gov.uk/text\\_only/news/newstext.asp?238&printVersion=yes](http://www.fco.gov.uk/text_only/news/newstext.asp?238&printVersion=yes)>.

<sup>24</sup> The objectives of Operation Desert Fox were detailed by Prime Minister Tony Blair at a press conference in London on 20 Dec. 1998. Foreign & Commonwealth Office, London, 'Assessment of Operation Desert Fox and forward strategy', URL <<http://www.fco.gov.uk/news/newstext.asp?1860>>.

<sup>25</sup> Iraq claimed that Kuwait had illegally extracted \$2.4 billion of crude oil from its Rumala oilfield, that Kuwait and other OPEC countries were ignoring oil export quotas and depriving Iraq of a fair market share, and that Kuwait's possession of the Warba, Bubiyan and Failaka islands in the Persian Gulf was illegal and hindered Iraq's access to the Gulf.

<sup>26</sup> Boutros-Ghali, B., *The United Nations and the Iraq–Kuwait Conflict 1990–1996* (United Nations: New York, 1996), pp. 14–15.

invasion of Kuwait, demanded the immediate withdrawal of all Iraqi forces, and called upon Iraq and Kuwait to begin intensive negotiations to resolve their differences immediately.<sup>27</sup> Despite continued opposition from other nations in the region and around the globe, Iraq did not withdraw from Kuwait. In order to put pressure on Iraq, the Security Council adopted Resolution 661 on 6 August 1990 which imposed full and mandatory sanctions against Iraq.<sup>28</sup> Only humanitarian assistance such as foodstuffs and medical supplies was permitted to be imported by Iraq. This resolution also established the UN Security Council Sanctions Committee, comprised of all 15 Security Council members, which was mandated to oversee the sanctions measures imposed against Iraq. Significantly, Resolution 661 also cited the terms of Article 51 of the UN Charter in 'Affirming the inherent right of individual or collective self-defence, in response to the armed attack by Iraq against Kuwait.'<sup>29</sup>

Several other resolutions are also important in establishing elements of the first sanctions regime against Iraq.

Resolution 665 of 25 August 1990 called on member states with maritime forces in the region to halt all inward and outward shipping to ensure strict compliance with sanctions.<sup>30</sup> Resolution 666 called upon the Sanctions Committee to evaluate the need for humanitarian assistance to Iraq.<sup>31</sup> The Security Council requested the Sanctions Committee to formulate a response to states asking for economic assistance because of the implementation of sanctions against Iraq in Resolution 669.<sup>32</sup> Resolution 670 reaffirmed the obligation for strict compliance with the sanctions against Iraq and confirmed that the sanctions were in effect for all types of transport, including aircraft.<sup>33</sup>

<sup>27</sup> UN Security Council Resolution 660, 2 Aug. 1990. Chapter VII of the UN Charter concerns 'Action with respect to threats to the peace, breaches of the peace, and acts of aggression'. Article 39 of the Charter states that: 'The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measure shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security'.

Article 40 of the UN Charter states that: 'In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures'.

<sup>28</sup> UN Security Council Resolution 661, 6 Aug. 1990.

<sup>29</sup> Chapter VII, Article 51 of the UN Charter states that: 'Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such actions as it deems necessary in order to maintain or restore international peace and security.' The Security Council has never lifted or modified Resolution 661 and as a result, the UK and the USA have argued that they have the authority under Article 51 to take such actions as they deem necessary to restore international peace and security.

<sup>30</sup> UN Security Council Resolution 665, 25 Aug. 1990.

<sup>31</sup> UN Security Council Resolution 666, 13 Sep. 1990.

<sup>32</sup> UN Security Council Resolution 669, 24 Sep. 1990.

<sup>33</sup> UN Security Council Resolution 670, 25 Sep. 1990.

Resolution 678 of 29 November 1990 demanded Iraqi compliance with Resolution 660 and all subsequent resolutions and authorized member states ‘to use all necessary means to uphold and implement Resolution 660 and all subsequent resolutions and to restore international peace and security in the area’ if Iraq did not withdraw from Kuwait before 15 January 1991.<sup>34</sup>

Iraq did not remove its troops from Kuwait by the 15 January 1991 deadline. As a consequence, military action by the international coalition began against Iraq on 17 January 1991. The offensive against Iraq continued until Kuwait was liberated on 27 February 1991. Throughout this time the first economic sanctions regime—instituted in order to pressure Iraq to withdraw from Kuwait—had remained in place. The liberation of Kuwait and the end of the military offensive did not signify the end of the sanctions, however. The first sanctions regime gave way to its successor upon the adoption of the ceasefire.

### **Sanctions related to disarmament and non-proliferation**

The ceasefire resolution, Resolution 687, adopted on 3 April 1991, determined that the full trade embargo (other than medicine and health supplies) against Iraq would remain in force pending Iraqi compliance with the terms imposed under the resolution.<sup>35</sup> These terms included a comprehensive set of measures that Iraq was to undertake to ensure elimination of its NBC weapons and related missile delivery systems.

In this second sanctions regime the embargo was directed to continue, with a review every 60 days ‘in the light of the policies and practices of the Government of Iraq, including the implementation of all relevant resolutions of the Council, for the purpose of determining whether to reduce or lift the prohibitions referred to therein’.<sup>36</sup> Under paragraph 22, the Security Council determined that the sanctions would continue until Iraq had complied with paragraphs 8–13 of the resolution. These paragraphs pertain specifically to the destruction, removal or rendering harmless, under international supervision, of all chemical and biological weapons (CBW), all stocks of agents, all related subsystems and components, and all related research, development, support and manufacturing facilities, as well as all ballistic missiles with a range greater than 150 km and related major parts and repair and production facilities. Iraq was also required to declare all locations, amounts and types of the above items within 15 days of the adoption of Resolution 687 and to agree to urgent, on-site inspections.

Paragraph 9 of the resolution provided for the creation of UNSCOM, mandated to implement immediate on-site inspections of Iraq’s chemical, biological and missile capabilities, on the basis both of Iraq’s own declarations and of the designation of the Special Commission itself. Iraq was also ordered

<sup>34</sup> UN Security Council Resolution 678, 29 Nov. 1990.

<sup>35</sup> UN Security Council Resolution 687, 3 Apr. 1991. Paragraph 20 states the prohibitions against the sale or supply to Iraq of commodities or products and prohibitions against financial transactions contained in Resolution 661, shall not apply to foodstuffs or materials and supplies for essential civilian needs.

<sup>36</sup> UN Security Council Resolution 687 (note 35), para. 21.

to yield possession of all items specified in paragraph 8 to UNSCOM in order that it may destroy, remove or render them harmless. This was to include items at locations designated by UNSCOM and the destruction by Iraq of all missile capabilities under UNSCOM's supervision. Furthermore, Iraq was ordered to unconditionally agree not to use, develop, construct or acquire any of the items specified in paragraphs 8 and 9 as well as to consult with UNSCOM as regards future monitoring and verification of Iraq's compliance with the terms of these paragraphs. Iraq was also ordered not to acquire or develop nuclear weapons or capabilities, to reaffirm its obligations under the NPT. Iraq was obliged to declare its nuclear material, equipment and sub-systems to the International Atomic Energy Agency (IAEA) and to be subject to the inspection and verification activities of the IAEA.

However, the scope of Resolution 687 is not confined to disarmament and non-proliferation issues as it requires Iraq's compliance concerning arrangements for the demarcation of the Iraq–Kuwait border and the establishment of a fund for compensating loss and damage sustained by Kuwait in the invasion by Iraq. Thus, the scope of the second sanctions regime goes further than did the first.

A partial lifting of the prohibition on the purchase of oil from Iraq by UN member states has been permitted for humanitarian purposes.<sup>37</sup> In order to ensure that this partial lifting was not exploited to undermine the purpose of the sanctions, Resolution 715 of 11 October 1991 requested the Sanctions Committee, in cooperation with UNSCOM and the Secretary-General of the United Nations, to develop an export control mechanism to monitor sales of potential dual-use commodities by other countries to Iraq.<sup>38</sup>

By the start of 1998 Iraq had not fully complied with the terms of Resolution 687, specifically in the area of chemical and biological weapons and agents, but continued to demand suspension of the sanctions against it. UNSCOM inspectors were not able to freely inspect all possible sites and could not confirm that all CBW and stocks of agents and related research and development had been destroyed, removed or rendered harmless. A particular issue of contention between UNSCOM and Iraq was the inspection of eight presidential sites, to which inspectors were repeatedly denied access. The issue of access to presidential sites precipitated a crisis in relations between the UN Security Council and Iraq which lasted between December 1997 and February 1998 and which included the threat of use of force against Iraq to secure compliance with existing resolutions. This crisis was resolved short of the use of force through a Memorandum of Understanding (MOU) between the United Nations and Iraq agreed between Secretary-General Kofi Annan and the Government of Iraq.<sup>39</sup>

<sup>37</sup> The terms of Resolution 712, which would have allowed Iraq to export certain quantities of oil in order to purchase humanitarian supplies, were refused by Iraq. The resolution would have required that all of Iraq's export contracts and imports and distribution of humanitarian goods be subject to UN monitoring. UN Security Council Resolution 712, 19 Sep. 1991.

<sup>38</sup> UN Security Council Resolution 715, 11 Oct. 1991, para. 7.

<sup>39</sup> Under the terms of the MOU Iraq reconfirmed its acceptance of the terms of all relevant resolutions of the Security Council, including resolutions 687 and 715. Iraq also promised compliance with

As a result of the inability to declare Iraq free from CBW, the economic sanctions against Iraq remained in place. In spite of diplomatic tensions and the possibility of military action, humanitarian assistance to Iraqi civilians was increased.<sup>40</sup>

During a 3 August visit to Iraq the Executive Chairman of UNSCOM, Richard Butler, was told by Deputy Prime Minister of Iraq Tariq Aziz to inform the Security Council that Iraq's obligations under section C of Resolution 687 had been fulfilled. When Butler responded that this was not possible, Aziz suspended the meeting. Two days later Iraq announced that it was halting cooperation with UNSCOM and the IAEA pending a termination of the oil embargo, a first step in full removal of the sanctions, as well as a reorganization of UNSCOM and transfer of its headquarters to either Geneva or Vienna. If these demands were met, Iraq would permit monitoring as outlined under Resolution 715.<sup>41</sup> The President of the Security Council deemed Iraq's actions unacceptable, and sanctions continue.

Iraq continued to hinder UNSCOM's monitoring activities and on 9 September 1998, in Resolution 1194, the Security Council decided not to conduct its 60-day sanctions reviews until Iraq rescinded its 5 August decision to halt cooperation with UNSCOM.<sup>42</sup>

This Iraqi decision was the proximate cause for the military operations (known as Operation Desert Fox) undertaken by the UK and the USA on 17–20 December 1998.

After the military action against Iraq, Trade Minister Mohammed Mehdi Saleh confirmed that Iraq refused the continuation of the Oil-for-Food assistance programme and demanded the lifting of sanctions—although the United Nations reported that it had not received official word from Iraq concerning such intentions.<sup>43</sup>

China, France and Russia continued to press for a far-reaching review of the approach towards securing Iraqi compliance with existing resolutions—including considering the lifting of sanctions against Iraq or their modification—while Saudi Arabia was said to be preparing an initiative to lessen the sanctions against Iraq in early 1999.<sup>44</sup>

UNSCOM and the IAEA. The MOU also noted that the lifting of sanctions was 'of paramount importance' to the people and Government of Iraq. The sanctions cannot be lifted until the Security Council determines that Iraq has fulfilled all of its obligations under the relevant Security Council resolutions, including Resolution 687. United Nations–Iraq Memorandum of Understanding, UN document S/1998/166, 23 Feb. 1998. UNSCOM's activities in 1998 are discussed in chapter 13 in this volume.

<sup>40</sup> The provisions of the Oil-for-Food Programme, established after 1995, were increased and in June 1998 states were authorized to export to Iraq parts and equipment to increase the export of petroleum and petroleum products. UN Security Council Resolution 1153, 20 Feb. 1998; and UN Security Council Resolution 1175, 19 June 1998.

<sup>41</sup> United Nations Special Commission, 'UNSCOM: a chronology of main events', URL <<http://www.un.org/Depts/unscom/chronology.htm>>.

<sup>42</sup> UN Security Council Resolution 1194, 8 Sep. 1998.

<sup>43</sup> Meixler, L., 'Iraq says it won't extend oil-for-food program', Associated Press, URL <[http://foxnews.com/news/international/1228/i\\_ap\\_1228\\_10.sml](http://foxnews.com/news/international/1228/i_ap_1228_10.sml)>; and Reuters, 'UN not told of any halt in Iraq oil-for-food plan', URL <[http://dailynews.yahoo.com/headlines/ts/story.html?s=v/nm/19981227/ts/iraqun\\_1.html](http://dailynews.yahoo.com/headlines/ts/story.html?s=v/nm/19981227/ts/iraqun_1.html)>.

<sup>44</sup> Reuters, 'Saudi proposes easing of Iraqi sanctions—papers', URL <[http://dailynews.yahoo.com/headlines/ts/story.html?s=v/nm/19990110/ts/sanctions\\_1.html](http://dailynews.yahoo.com/headlines/ts/story.html?s=v/nm/19990110/ts/sanctions_1.html)>.

The military action against Iraq may lead to the demise of UNSCOM in its original form, but in consideration of the UN resolutions Iraqi compliance on several levels must be complete and unconditional in order for the prohibitions against the import of Iraqi commodities to be lifted. While it is now generally agreed that the nuclear part of the disarmament work has been completed to the degree that could reasonably be asked, by contrast, UNSCOM is convinced that some biological and chemical weapon-related materials remain in Iraq. Should the economic sanctions imposed against Iraq be at an end, it will be thanks to international pressure, not as a result of UN assurances that Iraqi biological and chemical weapon capabilities have been destroyed, removed or rendered harmless.

### III. International response to nuclear tests by India and Pakistan

Much discussion and analysis have been devoted to the question of how the international community would respond if a state crossed the 'threshold' between non-nuclear weapon state status and possession of a nuclear weapon.<sup>45</sup> A certain ambivalence exists regarding how far events in 1998 shed light on this question. If it is argued that India and Pakistan, although not parties to the NPT, violated not only a norm against nuclear testing but also a norm against nuclear proliferation this would be an indirect recognition of Indian and Pakistani nuclear-weapon status. However, most states have withheld legal recognition arguing that to do otherwise would undermine the existing nuclear non-proliferation regime, particularly the NPT. According to this view, India and Pakistan have not crossed the threshold to nuclear-weapon status since this can only be conferred by the international community (through a revision of the NPT) and not claimed unilaterally.<sup>46</sup>

Events in 1998 were certainly significant, but their importance should not be exaggerated. While India and Pakistan presented the tests as a watershed, it can be argued that they actually crossed the nuclear threshold before 1998—India in 1974 and Pakistan around 1986—and that recent tests confirmed their nuclear status.<sup>47</sup>

Consequently, this section is confined to the international response to the violation of the norm against nuclear testing rather than nuclear proliferation.

The five permanent members of the UN Security Council met on 4 June to consider their response to the tests. The response included a condemnation of the tests and outlined positive measures that the P5 were prepared to support

<sup>45</sup> Article IX, para. 3 of the NPT defines a 'nuclear-weapon state' as 'one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January, 1967'.

<sup>46</sup> The legal definition of a nuclear weapon state and a more political definition can coexist. E.g., for many years China was not recognized as a nuclear weapon state because it remained outside the NPT. At the same time, the existence of Chinese nuclear weapons was taken into account by states in conducting their international relations. See also chapter 12, section II in this volume.

<sup>47</sup> This issue is discussed further in chapter 9 in this volume.

to promote reconciliation and cooperation between India and Pakistan. The statement contained no mention of coercive measures or sanctions.<sup>48</sup>

US Secretary of State Madeleine Albright said that the P5 met 'because as the permanent members of the Security Council, we have an obligation to respond to what is clearly a threat to international peace and security'.<sup>49</sup> Moreover, in the same statement Albright made it clear that as part of this response 'a number of nations, including the United States, will maintain sanctions against India and Pakistan until this situation is resolved. The United States will also insist that no nation that disregards international norms become a permanent member of the UN Security Council'.

Asked what the P5 would do if nuclear weapons were deployed, Albright replied:

we have set forth a very unified and united message about what we are calling on India and Pakistan to do in order to have them stop testing and try to avert an arms race, and sign up to the CTBT and refrain from deploying missiles and stop production of fissile materials. . . . I think we want to see how this message is received. It is, I think, a strong message from the permanent members of the Security Council, delivered loud and clear. . . . Should they [India and Pakistan] take additional steps, I think there are other ways that the international community can deal with this.<sup>50</sup>

The meaning of the word 'deployed' has not been clarified. In Indian statements it appears to mean introduced into the armed forces, meaning that in theory missiles might be built and stored without technically being deployed. Whether the United States accepts this definition is not clear.<sup>51</sup>

As noted above, the UN Security Council responded to the tests by India and Pakistan with agreed statements issued by the president and a resolution that were part of the widespread condemnation of the tests. While Resolution 1172 demanded that India and Pakistan refrain from further tests, it did not impose sanctions or any other measures that could be seen as punitive or specify measures that would be taken in case this demand was ignored.

The presidency of the European Union (EU) was held by the UK at the time that the tests took place. The UK issued a statement on 25 May.<sup>52</sup> According to that statement, the EU 'will take all necessary measures should India not accede to and move to ratify the relevant international non-proliferation agreements in particular the Comprehensive Test Ban Treaty'. Member states

<sup>48</sup> The agreed statement of 4 June 1998 by the P5 is available at Foreign & Commonwealth Office, London, 'Nuclear tests in South Asia', URL <<http://www.fco.gov.uk/news/newstext.asp?1099>>.

<sup>49</sup> US Department of State, Secretary of State Madeleine K. Albright, 'Statement at the P-5 foreign ministers meeting on South Asia', UN Offices Geneva, 4 June 1998, URL <<http://secretary.state.gov/www/statements/1998/980604a.html>>.

<sup>50</sup> US Department of State, Secretary of State Madeleine K. Albright, 'Press conference on the crisis in South Asia', Palais des Nations, Geneva, 4 June 1998, URL <<http://secretary.state.gov/www/statements/1998/980604.html>>.

<sup>51</sup> The USA and India have conducted a series of bilateral discussions in 1998 covering at least 4 issue areas: Indian membership of the CTBT, the prospects for a Fissile Material Treaty, Indian nuclear and nuclear-related export controls, and India's defence posture (including the role of nuclear weapons in it). Mohan, C. R., 'PM rejects demands to limit nuclear capabilities', *The Hindu* (Internet edn), 16 Dec. 1998, URL <<http://www.webpage.com/hindu/today/01/01160001.htm>>.

<sup>52</sup> 'Statement of the European Union on nuclear tests in India', *EU Bulletin*, 5-1998 (May 1998).

agreed to work for a delay in the consideration of loans to India before the World Bank and other financial institutions and asked the Commission of the European Communities 'to consider in its review of the General System of Preferences (GSP) the implications of the nuclear tests and India's progress in acceding to international nonproliferation agreements for India's continued eligibility for GSP preferences'.

The EU member states followed through on this statement and on 26 May the World Bank postponed consideration of three World Bank and one International Finance Corporation loans to India then before the Board of Governors. The value of these loans (which were not cancelled although consideration of them was indefinitely postponed) was roughly \$850 million.<sup>53</sup> With proposals before other financial institutions, loans to India worth approximately \$1.2 billion in total were delayed.

Subsequently, on 29 May the EU released a further statement after the tests conducted by Pakistan. In this statement the EU again agreed to 'take all necessary measures should Pakistan not accede to and move to ratify the relevant international non-proliferation agreements in particular the Comprehensive Test Ban Treaty'.<sup>54</sup>

While the EU statements left open the possibility of additional future measures should India and/or Pakistan conduct further tests, there was no agreement on a common action. This reflected the divergent national views on how to respond to the tests in an area (Common Foreign and Security Policy) where there is no obligation on member states to form a common view.

The issue of how cooperation against proliferation should be conducted was part of the discussion of a new transatlantic political agenda in 1998. In this area the EU member states all object to the use of the US national laws to affect matters considered to be sovereign decisions in individual EU countries. Speaking at the end of the British Presidency of the European Union, Prime Minister Tony Blair noted that 'We in Europe have always taken very seriously the fight to curb terrorism and the spread of weapons of mass destruction. But the US sanctions laws made our cooperation on these issues more, rather than less difficult'.<sup>55</sup> As trade falls within the competence of the EU, there are also instruments to pursue this common policy at a community level.

Following a year of negotiation between the European Commission and US authorities an agreement was reached in June 1998 related to European concerns about the impact of the 1996 Helms–Burton Act and Iran–Libya Sanctions Act.<sup>56</sup> The USA committed itself to issue waivers for EU companies under the two acts and to resist future attempts by Congress to push through

<sup>53</sup> World Bank, 'Loans to India postponed', *Press Release*, no. 98/1778/SAS, 26 May 1998.

<sup>54</sup> 'Statement of the European Union on nuclear tests in Pakistan', *EU Bulletin*, 5-1998 (May 1998).

<sup>55</sup> Prime Minister Tony Blair, statement after the EU/US summit meeting in London, 18 May 1998, Foreign & Commonwealth Office, London, 'US sanctions laws', URL <<http://www.fco.gov.uk/news/newstext.asp?979>>.

<sup>56</sup> The Helms–Burton Act, which is directed towards Cuba, is not in any way related to non-proliferation. The Iran–Libya Sanctions Act is.

similar legislation.<sup>57</sup> This would make it more difficult for the Congress to use domestic legislation to influence the approach of EU member states towards economic sanctions on India and Pakistan.

In addition to the UN and EU activities, the eight countries that meet annually to discuss political issues of mutual concern in the 'G8' process (the G7 plus Russia) issued a condemnation of the Indian nuclear tests at their summit meeting in Birmingham, UK (which took place before the nuclear tests by Pakistan).

The G8 is not an executive body but an informal meeting. The eight agreed that each should work to persuade the Indian Government to modify its policy using whichever method each country believed to be the most effective. The G8 also made a commitment to enhance cooperation on export controls designed to deny any kind of assistance to programmes for NBC weapons and their means of delivery.<sup>58</sup> The G8 states established a Senior Officials Task Force which met on an ad hoc basis in 1998 to consider responses to the nuclear tests, including economic sanctions. The G8 states invited senior officials from Argentina, Australia, Brazil, China and Ukraine to attend these meetings in 1998 and, in February 1999, also invited South Korea to join the group.<sup>59</sup>

The NATO–Russia Permanent Joint Council, meeting in Luxembourg in May 1998, also issued a condemnation of the nuclear tests by India and Pakistan. However, no sanctions against either India or Pakistan were agreed in the framework of NATO.<sup>60</sup>

### **Economic sanctions**

The failure by the UN Security Council to include economic sanctions in Resolution 1172 may reflect both legal and political factors. The main political factor is the difference of view among the P5 about the effectiveness of sanctions. On 12 May 1998, then Russian Foreign Minister Yevgeny Primakov stated that 'we are very apprehensive about sanctions. Sanctions are, if you like, extreme measures that are not always productive . . . I do not think that we will support sanctions against India'.<sup>61</sup> Similarly, expert observers

<sup>57</sup> The EU in effect made progress on developing the Transatlantic Economic Partnership (an EU–US trade initiative sought by the USA) conditional on obtaining relief for European companies from the impact of US sanctions legislation.

<sup>58</sup> Documentation from the summit is available at 'Britain welcomes the summit of world leaders', URL <<http://birmingham.g8summit.gov.uk>>. The 8 participants are Canada, France, Germany, Italy, Japan, Russia, the UK and the USA.

<sup>59</sup> Ministry of Foreign Affairs, Japan, 'The Third Meeting of the Senior Officials Task Force on Nuclear Tests by the Republic of India and the Islamic Republic of Pakistan', Press Conference by the Press Secretary, 5 Feb. 1999, URL <<http://www.mofa.go.jp/announce/1999/2/205.html>>.

<sup>60</sup> North Atlantic Treaty Organization, 'Statement on the nuclear tests of Pakistan and India', NATO–Russia Permanent Joint Council Meeting at Ministerial Level, Luxembourg, 28 May 1998, URL <<http://www.nato.int/docu/pr/1998/p980529e.htm>>.

<sup>61</sup> Interview with Yevgeny Primakov by Svetlana Sorokina, NTV (Moscow), 12 May 1998, in 'Russia: Russia's Primakov interviewed on India, Iran', Foreign Broadcast Information Service, *Daily Report—Central Eurasia (FBIS-SOV)*, FBIS-SOV-98-132, 14 May 1998. This view commands support across a wide political spectrum in Russia. Vladimir Lukin, leader of the Yabloko Party in the State Duma, said during a visit to New Delhi: 'Moscow will never resort to any sanctions against or pressure

considered it unlikely that China would ever support economic sanctions as a response to the nuclear tests in spite of the tensions in bilateral relations with India.<sup>62</sup>

It could be argued that there is not a sufficient legal basis for sanctions against India and Pakistan because if international sanctions are to be justified they must be imposed 'to induce compliance with some international obligation that the target state has failed to observe. Collective sanctions for essentially punitive purposes have no accepted place in international law'.<sup>63</sup> Sanctions against a state such as Iraq or North Korea—which have violated norms and agreements freely entered into—would be different in kind from sanctions against India and Pakistan, neither of which is a member of the international nuclear non-proliferation regime.

As the UN has no mechanism for implementing Security Council decisions, international sanctions are always given expression through national actions by UN members. Although in the case of India and Pakistan no international sanctions were agreed, some countries—notably the USA—have imposed sanctions as a response to the nuclear tests. The unilateral use of sanctions has aroused considerable controversy since the mid-1990s.<sup>64</sup>

Some states have put forward the view that unilateral sanctions 'are contrary to international law, the UN Charter and the norms and principles governing peaceful relations among states'.<sup>65</sup> Specifically, these measures are said to contravene General Assembly Resolution 2625 of 1970 by which 'no State may use or encourage the use of unilateral economic, political or any other type of measure to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights'.<sup>66</sup> However, in 1997 a UN expert group provided a list of cases where sanctions might be justified which included measures adopted 'in response to a clear violation of universally accepted norms, standards, or obligations, provided these States are not seeking advantages for themselves but are seeking an international community interest'.<sup>67</sup> The legitimacy of individual sanctions against India and Pakistan would then turn on a judgement about whether nuclear non-proliferation was a universally accepted norm in conditions where neither India nor Pakistan is a signatory to the main legal non-proliferation instruments.

on Delhi and neither will it call the future of our bilateral relations in question'. Kotov, L., ITAR-TASS World Service (Moscow), 16 Sep. 1998, in 'Russia: Russian MPs, Iranian leaders discuss international issues', FBIS-SOV-98-259, 17 Sep. 1998.

<sup>62</sup> Ye Zhengjia quoted in 'China not to impose economic sanctions against India', *Indian Express* (electronic edn), 20 May 1998, URL <<http://www.expressindia.com/news/13800031.htm>>.

<sup>63</sup> Szasz (note 17), p. 456.

<sup>64</sup> See also chapter 12 in this volume.

<sup>65</sup> This statement was made by the Ministers of Foreign Affairs and Heads of Delegation of the non-aligned countries at a meeting which occurred after India had conducted 2 sets of tests. Communiqué of the Ministerial Meeting of the Coordinating Bureau of the Movement of Non-Aligned Countries, Cartagena de Indias, Colombia, 19–20 May 1998, UN document A/52/970, 26 June 1998.

<sup>66</sup> UN General Assembly Resolution 2625, 24 Oct. 1970, is reproduced in *Yearbook of the United Nations, 1970*, vol. 24 (UN Office of Public Information: New York, 1970), pp. 788–92.

<sup>67</sup> United Nations, Report of the Secretary-General on Macroeconomic policy questions: trade and development, Economic measures as a means of political and economic coercion against developing countries, UN document A/52/459, 14 Oct. 1997, p. 22.

*National responses*

The failure to agree common policies within international bodies such as the UN and the EU was reflected in the divergent national policies adopted towards India and Pakistan.

The United States imposed a series of economic sanctions on India and Pakistan including ending assistance under the Foreign Assistance Act of 1961 (except for humanitarian assistance), ending military sales and financing, and denying other US financial aid. These measures were introduced with immediate effect. The changes to US export controls are considered further below. The main economic sanctions introduced consisted of the following measures: denial of any credit, credit guarantees, or other financial assistance by any part of the US Government; opposition to the extension of any loan for financial or technical assistance by any international financial institution; and prohibition of US banks from making any loan or providing any credit to the Government of India, except for the purposes of purchasing food or other agricultural commodities. In addition, the Board of Directors of the Export–Import Bank may not give approval to guarantee, insure, or extend credit, or participate in the extension of credit, in support of US exports to India.

These sanctions were required by a US law (section 102 of the Arms Export Control Act, AECA, also known as the Glenn Amendment) within which the administration has very little discretion to waive provisions depending on the specific context in which the law is invoked.<sup>68</sup> Moreover, as the law contains no provisions for lifting sanctions this would require separate legislation.

The Clinton Administration made no secret of its lack of enthusiasm for the Glenn Amendment and worked to introduce changes to allow the president greater flexibility in applying the law without codifying specific steps required from India and Pakistan as conditions to obtain relief from sanctions.

The Clinton Administration did not oppose the use of sanctions in principle but argued that they should be ‘properly designed and implemented as part of a coherent strategy’. Under these conditions, sanctions could be ‘a valuable tool for advancing American interests and defending US values’.<sup>69</sup>

In the specific case of Indian and Pakistani nuclear testing, however, economic sanctions were not considered useful although the USA is India’s largest trade and investment partner. Recent changes in India’s economic policy have been welcomed by the United States and sanctions were considered unhelpful at a time when Washington was calling on the Indian Government to renew its commitment to reform.

The Asian economic crisis subsequently made the timing of economic sanctions seem particularly perverse. From 1999 to 2001, \$115–130 billion worth

<sup>68</sup> The Glenn Amendment was a response to a feeling in Congress that the State Department was interpreting the AECA vis-à-vis Pakistan in ways that were inconsistent with the intention of Congress. Specifically, the State Department was approving licences for certain defence articles and services to Pakistan which Congress believed should be denied. Consequently, the Glenn Amendment limited the discretion of the State Department.

<sup>69</sup> ‘Economic sanctions’, statement before the Senate Task Force on Sanctions by Stuart Eizenstat, Under Secretary of State for Economic, Business and Agricultural Affairs, 8 Sep. 1998.

of private investment is needed in India for planned infrastructure projects according to the World Bank—a significant increase in investment over current levels. There was concern that sanctions might raise concerns among private institutions (not prohibited from investing in or lending to India) already closely watching Indian reactions to the economic crisis.<sup>70</sup>

Mandated US economic sanctions had a smaller relative impact on Pakistan because most types of economic relations had already been scaled back in previous years, either in response to proliferation concerns or because Pakistan had failed to meet economic benchmarks. However, Pakistan was vulnerable to US actions in international financial institutions.

Some members of Congress also regarded economic sanctions as inappropriate.<sup>71</sup> In October 1998 the Congress passed the Omnibus Appropriations Act which included a section amending US sanctions law.<sup>72</sup> Under this act the president was allowed to waive certain sanctions up until October 1999, and on 1 December 1998 President Bill Clinton granted waivers permitting US loans and investments in the two nations and the use of foreign assistance funds for international military training and education programmes as well as allowing US participation in the International Monetary Fund (IMF) programme of economic measures agreed with Pakistan.<sup>73</sup>

Some governments were ambivalent about sanctions against India and Pakistan. The position of the British Government was summarized in the House of Lords:

We are concerned that in both India and Pakistan the consequences of any renewed arms race may divert scarce resources from vital productive development and their efforts to reduce poverty and to improve their education provision. I can give my noble friend the assurance, at least in part, not necessarily that there will be no sanctions of any economic nature against either country, but that we shall do everything we can to sustain the diplomatic effort. We are enormously conscious of the importance of trying to sustain aid programmes which help the poorest people in those countries.<sup>74</sup>

After the nuclear tests were conducted there was a widespread reluctance to impose economic sanctions against India and Pakistan. Nevertheless, some

<sup>70</sup> E.g., sanctions might make private financing less likely once loan guarantees issued by the Export–Import Bank were halted. World Bank, ‘Government of India, private sector to exchange views on private investment in India’s infrastructure’, *News Release* no. 99/1984/SAS, Conference on Private Investment in Infrastructure in India, Paris, 2–3 Nov. 1998, URL <<http://www.worldbank.org/html/extdr/extme/1984.htm>>; and ‘Statement by the Hon. Yashwant Sinha, Governor of the Fund and the Bank for India’, *Press Release* no. 34, 1998 Joint Annual Discussion between the International Monetary Fund and World Bank Group, Washington DC, 6–8 Oct. 1998.

<sup>71</sup> E.g., in July 1998 a bill was introduced in the House of Representatives to amend the Arms Export Control Act to give the president some flexibility in applying sanctions. No action was taken on this bill. India–Pakistan Sanctions Flexibility Act, H. R. 4209, 14 July 1998.

<sup>72</sup> The specific provision within the Appropriations Act is known as the India–Pakistan Relief Act of 1998, sometimes referred to as the Brownback Amendment.

<sup>73</sup> United States Information Agency, *Presidential Determination on India and Pakistan*, PD no. 99-7 (White House, Office of the Press Secretary: Washington, DC, 1 Dec. 1998), URL <<http://www.usia.gov/regional/nea/sasia/docs/doc82.htm>>.

<sup>74</sup> Baroness Symons of Vernham Dean, British House of Lords, *Hansard*, 1 June 1998, col. 62.

governments did introduce economic sanctions against India and Pakistan even though they had no legal obligation to do so.

After India undertook its second set of tests the Government of Japan decided to suspend yen-loans for new projects to India and to 'cautiously examine' loans extended to India by international financial institutions. After Pakistan proceeded with tests Japan decided that grant aid for new projects should be frozen (except for emergency and humanitarian aid), suspended yen-loans to Pakistan and decided to 'cautiously examine' loan programmes to Pakistan by international financial institutions.<sup>75</sup> In November 1998 Japan was maintaining its sanctions.<sup>76</sup>

After India and Pakistan carried out nuclear tests Australia suspended all non-humanitarian economic assistance to India (worth approximately \$12.5 million). Australia continued its economic assistance programmes with Pakistan, all of which were considered to be humanitarian in character.<sup>77</sup>

Canada cancelled talks on the scope of development assistance to India for 1999, which were scheduled to begin shortly after the tests took place. Non-humanitarian development assistance to India was stopped, and Canada opposed non-humanitarian loans to India from the World Bank. Moreover, after India's first test, Canada offered to divert assistance withdrawn from India to development assistance programmes in Pakistan if Pakistan refrained from testing.<sup>78</sup> However, a programme for humanitarian development assistance for 1999 and onwards was subsequently put in place for both countries, and Canada's response to both India and Pakistan vis-à-vis the use of development assistance is based on 'encouraging policy actions and reforms in support of stability, equity and growth' rather than on sanctions.<sup>79</sup>

Some European countries also took limited actions in linking levels of economic assistance to India and Pakistan directly to the conduct of nuclear tests. Germany cancelled its discussions with India and Pakistan of new programmes for economic development assistance and rescinded the remaining development aid resources agreed for 1998 (worth DM315 million in the case

<sup>75</sup> Ministry of Foreign Affairs of Japan, 'Comments by the Chief Cabinet Secretary on measures in response to the second nuclear testing conducted by India', 14 May 1998, URL <<http://www2.ntca.com:8010/infomofa/announce/announce/1998/5/0312-09.html>>; and Ministry of Foreign Affairs of Japan, 'Comments by the Chief Cabinet Secretary on measures in response to nuclear testing conducted by Pakistan', 29 May 1998, URL <[http://www2.ntca.com:8010/infomofa/announce/announce/1998/5/p\\_measure.html](http://www2.ntca.com:8010/infomofa/announce/announce/1998/5/p_measure.html)>.

<sup>76</sup> Ministry of Foreign Affairs of Japan, 'Response of the Government of Japan to recent announcements by the Government of the United States concerning sanctions against the Republic of India and the Islamic Republic of Pakistan', 10 Nov. 1998, URL <<http://www.mofa.go.jp/announce/press/1998/11/1110.html>>.

<sup>77</sup> Statements by Australian Ministry for Foreign Affairs on 14 May (related to India) and 29 May 1998 (related to Pakistan), reproduced in *Australian Foreign Affairs and Trade Record*, June 1998, p. 28.

<sup>78</sup> Department of Foreign Affairs and International Trade, Canada, 'Notes for a statement by the Honourable Lloyd Axworthy, Minister of Foreign Affairs, to the Standing Committee on Foreign Affairs and International Trade "India's nuclear testing: implications for nuclear disarmament and the nuclear non-proliferation regime"', Ottawa, Ontario, 26 May 1998, URL <[http://www.dfait-maeci.gc.ca/english/news/statements/98\\_state/98\\_040e.htm](http://www.dfait-maeci.gc.ca/english/news/statements/98_state/98_040e.htm)>.

<sup>79</sup> Canadian International Development Agency (CIDA), 'Country policy framework: India', URL <<http://www.acdi-cida.gc.ca>>.

of India and DM80 million in the case of Pakistan).<sup>80</sup> Sweden cancelled a newly reached three-year agreement with India on economic cooperation for development worth approximately \$1.2 billion. The Swedish International Development Agency (SIDA) was tasked to develop a proposal for a new agreement focused narrowly on the alleviation of poverty and with a reduced volume of financing.<sup>81</sup>

### **Export controls and India and Pakistan**

As noted above, export controls are not sanctions—although they can be used as one instrument to enforce sanctions. Export controls allow a choice to be made about whether or not to allow any given export of a controlled item to take place.

It is widely accepted that there should not be a free market in any type of military technology. If military technology were distributed only according to the ability to pay for it this would pose a serious security risk. By extension, states have an obligation to place controls on access to technologies developed on their territory.<sup>82</sup> While all states should develop a system that allows them to control exports of military technology and civil technology with military applications, there is no general agreement on how those controls should be applied.

In the early 1990s there was discussion among governments that had cooperated in the Coordinating Committee on Multilateral Export Controls (COCOM) about whether and how export controls might be used after the cold war. By 1998 most states that participated in multilateral discussions appeared to support the view that export controls should focus on weapon programmes of concern. Export controls should not be targeted on a state or group of states. Individual countries are not named and the phrase ‘rogue states’ does not appear in the documents of any export regime. Neither, according to this view, should controls target behaviour that is not related to the proliferation of weapons.<sup>83</sup>

This diversity was underlined in the responses to the nuclear tests by India and Pakistan. No international organization or informal regime imposed or agreed an embargo on supplies of arms or other controlled items to India or

<sup>80</sup> Bundesministerium für wirtschaftliche Zusammenarbeit, ‘Bundesminister Spranger sagt Regierungsverhandlungen mit Indien ab’ [Federal minister Spranger reneges on governmental negotiations with India], Ministry for Economic Development Cooperation, *Press Statement*, 12 May 1998, URL <<http://www.bmz.de/.bin/lay/presse/archiv/pm98051201.html>>; and Bundesministerium für wirtschaftliche Zusammenarbeit, ‘Atomtests in Pakistan: Spranger sagt entwicklungspolitische Konsultationen ab’ [Atomic tests in Pakistan: Spranger reneges on development policy consultations], Ministry for Economic Development Cooperation, *Press Statement*, 28 May 1998, <<http://www.bmz.de/.bin/lay/presse/archiv/pm98052801.html>>.

<sup>81</sup> Swedish Ministry for Foreign Affairs, ‘Sverige säger upp samarbetsavtalet med Indien’ [Sweden cancels cooperation agreement with India], *Press Statement*, 13 May 1998.

<sup>82</sup> Some states have gone beyond this to apply controls to activities of their citizens even if those activities take place abroad.

<sup>83</sup> The discussion is summarized in Anthony, I. *et al.*, ‘Multilateral weapon-related export control measures’, *SIPRI Yearbook 1995: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 1995).

Pakistan. The Zangger Committee issued a statement condemning the nuclear tests in October 1998. However, as far as is known the committee did not modify its guidelines for nuclear exports in response to the tests.

At their meeting in Geneva the five permanent members of the UN Security Council 'confirmed their respective existing policies to prevent the export of equipment, materials or technology that could in any way assist programmes in India or Pakistan for nuclear weapons or ballistic missiles capable of delivering such weapons'.<sup>84</sup> The P5 did not make any commitment to modify their national policies and, as noted below, there are significant differences in the national interpretation of their obligations.

In Resolution 1172 the Security Council encouraged all states 'to prevent the export of equipment, materials or technology that could in any way assist programmes in India or Pakistan for nuclear weapons or for ballistic missiles capable of delivering such weapons' and welcomed 'national policies adopted and declared in this respect'.<sup>85</sup>

#### *National responses*

Although no mandatory arms embargo has been imposed, the nuclear tests of India and Pakistan have had an impact on the export control practices of some states.

As noted above, once the President of *the United States* had made a determination that a nuclear explosive device had been detonated by a non-nuclear weapon state the US response was conditioned by the terms of the Arms Export Control Act. The president made this determination on 13 May for India and on 30 May for Pakistan.

In both cases, sales of defence articles, defence services, and design and construction services were terminated and all licences for the export of any item on the US Munitions List were revoked. This included all types of licence for manufacture, technical assistance and distribution of any kind. As a result, cooperation was terminated with immediate effect.<sup>86</sup>

The termination of defence sales and the revocation of munitions export licences also applied to retransfers of items of US origin to India or Pakistan by foreign end-users. According to the Arms Export Control Act, written approval from the Office of Defense Trade Controls within the State Department is required before the authorized end-user of a defence article can

<sup>84</sup> Foreign & Commonwealth Office, London, 'Nuclear tests in South Asia', 4 June 1998, URL <<http://www.fco.gov.uk/news/newstext.asp?1099>>.

<sup>85</sup> UN Security Council Resolution 1172 (note 12).

<sup>86</sup> *Federal Register*, vol. 63 no. 97 (20 May 1998), p. 27781; and *Federal Register*, vol. 63 no. 116 (17 June 1998), p. 33122. The impact of changes in the US export controls on cooperative projects is discussed in chapter 9 in this volume. The US Munitions List is the part of the secondary regulations (known as the International Traffic in Arms Regulations or ITAR) that defines which defence articles and services are subject to licensing. The list is divided into 16 sections which include all categories of military equipment: aircraft and related articles; amphibious and related articles; vessels of war and special naval equipment; chemical agents; components, accessories, attachments, parts, software and systems associated with end-items; firearms; forgings, castings and machined bodies; military explosives and propellants; and military fuel thickeners. The final category in the list consists of the entire equipment and technology annex defined by the Missile Technology Control Regime.

re-export or retransfer that article. A non-transfer and use certificate is a condition of granting a licence for defence articles, including manufacturing licences and technical data, and this certificate is binding on the foreign end-user. If the foreign end-user is not a government agency (e.g., if the transfer is to an overseas manufacturer) the State Department may also insist on a guarantee from the government of the end-user that the end-use of the licensed article will be verified. Violation of these provisions can lead to the original licence being revoked and/or the imposition of sanctions.

As a result, it may be that countries and companies outside the United States are in effect barred from making transfers to India and Pakistan because the products contain technologies or items that are subject to US law.

The Arms Export Control Act is not the only element of US export control law. The Bureau of Export Administration (BXA) within the Commerce Department is responsible for implementing controls on exports of civilian articles and services with potential military applications. These controls are currently exercised under executive orders issued by the president using the authority of the International Emergency Economic Powers Act. This is because the Congress has not been able to agree a new text of the Export Administration Act which provided the legal authority for export controls on civilian items with military applications until it expired in 1994.<sup>87</sup> The items subject to control are identified in a Commodity Control List (CCL). In addition, the United States operates a 'catch-all' which states that a licence is required for any transaction if the exporter knows or has reason to believe that the end-user is involved in a nuclear or missile-related activity. In November 1998, the BXA named 40 Indian and 46 Pakistani end-users believed to be involved in nuclear, missile or military programmes. Subsequently, under the catch-all provision, a licence was required for any transfer of any articles or services (whether or not on a control list) to these entities.

*Russia* is India's single most important partner in nuclear and military-technical cooperation and the approach to cooperation with India in the military sphere and as regards civilian technologies with military applications has a central bearing on Indian capabilities. It is not thought that Russia plays any role in either the design or the material base of India's nuclear weapon programme.<sup>88</sup> The preferred position of Russia, and before that the Soviet Union, has been that neither India nor Pakistan develop nuclear weapons. Russia and India have a range of nuclear cooperation projects including in the areas of research and power generation.

The development of Russia's system to control exports of technologies that may be used to develop or produce NBC weapons has been a subject of con-

<sup>87</sup> Since 1994 the US Congress has tried to agree a new text of the Export Administration Act on 3 occasions without success. It has not been possible to balance the concerns of those wishing to reduce the burden of controls on exporters with the concerns of those who see proliferation risks as paramount.

<sup>88</sup> The possible exception being transfers of technology from India's programme to develop space-launch vehicles, with which Russia has cooperated, to missile programmes that might lead to the development of a delivery system for Indian nuclear weapons. See the section on 'The Missile Technology Control Regime' in appendix 15A in this volume. It is also possible that the MiG-27 and Su-30 fighter aircraft may be nuclear-capable.

siderable external interest since the dissolution of the Soviet Union. Developing effective nuclear export controls has been given the highest priority and, as noted above, civil nuclear cooperation probably plays a minimal if any part in India's nuclear weapon programme.<sup>89</sup> Although in 1998 there were calls for modifications to Russian controls over nuclear materials and to Russian export controls, these discussions were not related to developments in India.<sup>90</sup>

In the area of conventional armaments the nuclear tests did not lead to a reduction in cooperation between Russia and India. On the contrary, events in 1998 underlined Russia's desire to deepen military-technical cooperation. During a visit to India Defence Minister Igor Sergeyev stated that 'our countries face the task of building up the volume of cooperation potential, which will be promoted by a long-term Russian-Indian cooperation programme in military relations (which is now being drafted) up to the year 2010'.<sup>91</sup> During the visit to New Delhi of Russian Deputy Foreign Minister Grigoriy Karasin this programme was said to be near completion and it was hoped that this would be one of the documents signed during the Russia-India summit meeting on 23 December 1998. Karasin underlined that, although Russia and India take different views on the issue of nuclear weapon proliferation, this would not prevent deepening of cooperation between the two countries.<sup>92</sup>

As *China* is Pakistan's single most important partner in nuclear and military-technical cooperation, the Chinese approach to cooperation with Pakistan in the military sphere and as regards civilian technologies with military applications has a central bearing on Pakistani capabilities. In contrast to the case of Russia-India relations, it has often been suggested that China has played an important role in the development of the Pakistani nuclear weapon capability. In India it is believed that Pakistan has received 'substantive assistance' from China in terms of nuclear weapon-related know-how and materials as well as transfers of missiles and missile-related technology that can contribute to a Pakistani nuclear weapon delivery system.<sup>93</sup> The US Government has also reached similar conclusions with the Director of the Central Intelligence Agency identifying China as 'the primary source of nuclear-related equipment and technology' to Pakistan. Similarly, it has also been claimed that Pakistan had received M-11 missiles from China in the early 1990s and technical assistance in developing its own missiles.<sup>94</sup>

<sup>89</sup> Bertsch, G. and Grillot, S. (eds), *Arms on the Market: Reducing the Risk of Proliferation in the Former Soviet Union* (Routledge: New York, 1998).

<sup>90</sup> See the discussion in the section 'The Missile Technology Control Regime' in appendix 15A in this volume.

<sup>91</sup> Kotov, L., ITAR-TASS (Moscow), 19 Oct. 1998, in 'Russia: Sergeyev praises Russian-Indian defense cooperation', FBIS-SOV-98-292, 21 Oct. 1998.

<sup>92</sup> Kotov, L., ITAR-TASS (Moscow), 3 Nov. 1998, in 'Russia: Russia's Karasin hold talks in Delhi', FBIS-SOV-98-307, 5 Nov. 1998.

<sup>93</sup> Singh, J., 'India, Europe and non-proliferation: Pokharan II and after', *IDSJ Journal* (electronic version), Nov. 1998, URL <<http://www.idsa-india.org/an-nov8-1.html>>; and Banerjee, D., 'South Asian nuclear and missile environment', *Asian Defence Journal*, Nov. 1998, pp. 6-9.

<sup>94</sup> See chapter 9 of this volume. An overview of Sino-Pakistani nuclear and missile cooperation is available at the Center for Nonproliferation Studies, Monterey Institute of International Studies, 'Indian and Pakistani nuclear tests', URL <<http://cns.miis.edu/research/india/chinatoc.htm>>.

This assistance is said to have occurred in 1980–96 and in response the United States raised non-proliferation issues to the highest level in its bilateral dialogue with China in 1996–97. In this period China first pledged not to provide assistance to unsafeguarded nuclear facilities. Subsequently, China introduced new national export control regulations for nuclear materials and joined the discussion of nuclear export controls in the Zangger Committee.<sup>95</sup>

As a result, the impact of the Pakistani nuclear tests on its relations with China were of great interest. Speaking in June the US National Security Adviser said that the Chinese Government has ‘indicated and, in fact, complied with a commitment not to provide assistance to unsafeguarded nuclear facilities—i.e. Pakistan’.<sup>96</sup> Speaking after the visit to China of President Clinton, Secretary of State Albright said that the Chinese had ‘made clear this time that they would not be involved in missile transfers to Pakistan. They had hinted at various parts of that, but I think that this statement did go beyond that in making it clearer’.<sup>97</sup>

*The United Kingdom*, a significant arms supplier to India, responded to the tests with changes that were narrowly focused on nuclear-related exports. Foreign Office Minister Tony Lloyd announced that ‘all export licence applications for items listed on the Nuclear Suppliers Group (NSG) Dual-Use List will be denied to nuclear and nuclear-related end-users in India and Pakistan, as will all other goods to these end-users which could contribute to the Indian and Pakistani nuclear programmes’.<sup>98</sup> The Anglo-French Jaguar fighter aircraft is often named as one of the most likely delivery platforms for Indian nuclear weapons. As far as is known, no changes were introduced regarding licensing of controlled items other than nuclear and nuclear-related dual-use items.

*France* has historically been and still remains a significant arms supplier to both India and Pakistan. As far as is known, the nuclear tests in 1998 did not lead to any changes in French export control policy.

In the past, *Germany* has had significant cooperation with India in the area of arms transfers and defence industrial cooperation. The main current programme involves a framework agreement to construct two additional Type-1500 submarines for the Indian Navy (in addition to four in service in India). However, implementation of this agreement depends on the appropriation of funds by India.<sup>99</sup> In 1998 German authorities decided that in applying arms export controls to India and Pakistan what was described as a highly restrictive policy would be further intensified.<sup>100</sup>

<sup>95</sup> Anthony, I. and Zanders, J. P., ‘Multilateral security-related export controls’, *SIPRI Yearbook 1998: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 1998), pp. 382–84

<sup>96</sup> White House press briefing by National Security Adviser Sandy Berger, 17 June 1998, URL <<http://www.pub.whitehouse.gov/uri-res/I2R?urn:pdi://oma.eop.gov.us/1998/6/19/7.text.1>>.

<sup>97</sup> US Department of State, Secretary of State Madeleine K. Albright, ‘Press briefing’, Beijing, 28 June 1998, URL <<http://secretary.state.gov/www/statements/1998/980628a.html>>.

<sup>98</sup> ‘Nuclear industry’, British House of Commons, *Hansard*, 10 July 1998, col. 688.

<sup>99</sup> *Jane’s Fighting Ships, 1998–99* (Jane’s Information Group: Coulsdon, Surrey, 1998), p. 291.

<sup>100</sup> German Foreign Ministry, Private communication with Ian Anthony, 19 Nov. 1998.

Other European countries that are or have recently been suppliers of arms to India and/or Pakistan also introduced changes in policy. In *Sweden* the responsible minister stated that granting approval for licences to conduct new exports to India was 'completely out of the question'.<sup>101</sup> In *Switzerland* the Federal Council decided to deny any licences for war material to India and Pakistan, although this decision did not affect transfers of spare parts for licences granted before the tests.<sup>102</sup>

Following the tests, *Australia* suspended all defence relations with India and Pakistan, including training and advisory programmes.<sup>103</sup> *Canada* banned all military exports to India and Pakistan.<sup>104</sup>

After the establishment of full diplomatic relations in 1992 some observers have described an emerging range of contacts between Israel and India, including in the military field.<sup>105</sup> Immediately after the tests a visit to India by Israeli Chief of Staff Lieutenant General Amnon Lipkin-Shahak planned for June 1998 was cancelled. However, according to a close observer of the bilateral relationship there has been no evidence to suggest that emerging military cooperation between India and Israel will be interrupted.<sup>106</sup> Israel may face difficulties with the US policy of preventing re-export or retransfer of items supplied under licence.

#### IV. Conclusions

The decisions by Iraq not to comply with its obligations under the terms of the ceasefire agreed in 1991 and the nuclear tests conducted by India and Pakistan raised an important question: In conditions where achieving comprehensive disarmament through a multilateral treaty is not an available option, how should states respond to the reality of proliferation?

To state a preference for disarmament is not a policy so much as a statement of a desirable state of affairs. A policy would require the elaboration of steps and measures to reach this objective. However, in spite of sustained application of very severe economic sanctions and the use of force the United Nations was unable to give an assurance at the end of 1998 that Iraq had in fact eliminated its NBC weapons along with the delivery systems for them.

With regard to Iraq, while all of the permanent members of the UN Security Council made statements underlining the view that Security Council reso-

<sup>101</sup> 'Svar i riksdagen av Leif Pagrotsky om vapenexport till Indien' [Response in Parliament by Leif Pagrotsky on arms exports to India], Department of Industry and Trade Press Statement, Stockholm, 19 May 1998.

<sup>102</sup> Swiss Federal Office for Foreign Economic Affairs, Private communication with Ian Anthony, 17 Nov. 1998.

<sup>103</sup> Statements by Australian Ministry for Foreign Affairs (note 77).

<sup>104</sup> Department of Foreign Affairs and International Trade, Canada, 'Axworthy condemns Pakistan's nuclear weapons tests and announces sanctions', Press release no. 136, 28 May 1998, URL <[http://www.dfait-maeci.gc.ca/english/news/press\\_releases/](http://www.dfait-maeci.gc.ca/english/news/press_releases/)>.

<sup>105</sup> Kumaraswamy, P. R., *India and Israel: Evolving Strategic Partnership*, Security and Policy Studies no. 40 (Begin-Sadat Center for Strategic Studies: Bar Ilan University, Sep. 1998).

<sup>106</sup> Kumaraswamy, P. R., Private communication with Ian Anthony, 22 Nov. 1998.

lutions should be implemented in full, there were widespread differences of view about how this could be achieved.

China, France and Russia—while expressing concern or outright opposition to the coercive approach taken by the UK and the USA—offered no practical alternative beyond the hope that diplomacy would succeed. In particular, during the two pre-December 1998 crises (in which force was not used) none of these three countries was able to define a diplomatic approach that would succeed in enforcing existing resolutions.

It remained unclear at the end of 1998 how far the UK and the USA were prepared to go in attempting to coerce Iraq into full compliance with UN resolutions. While a far-reaching assessment of how to achieve Iraqi compliance with UN resolutions was called for, existing arrangements could only be modified with the consent of all the permanent members of the Security Council, including the UK and the USA.

In the case of India and Pakistan, there is little evidence that coercive measures (whether the use of force or sanctions) were seen as central instruments to prevent the development of nuclear weapon arsenals. Although some economic sanctions were introduced, the preferred approach appeared to be a combination of diplomacy (intended to persuade India and Pakistan to join cooperative arms control and disarmament processes) along with enhanced export controls (intended to make weapon development as difficult and costly as possible for India and Pakistan).