

Iraq Sanctions: Humanitarian Implications and Options for the Future

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We publish this report on the twelfth anniversary of the date on which the Security Council first imposed comprehensive economic sanctions on Iraq

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Note: Though this report has been produced in association with Save the Children UK, the views and recommendations expressed do not necessarily reflect the position of Save the Children UK

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Iraq Sanctions: Humanitarian Implications and Options for the Future

EXECUTIVE SUMMARY

1. Introduction The United Nations Security Council has maintained comprehensive economic sanctions on Iraq since August 6, 1990. The international community increasingly views the sanctions as illegitimate and punitive, because of well-documented humanitarian suffering in Iraq and widespread doubts about the sanctions' effectiveness and their legal basis under international humanitarian and human rights law.

2. A Flawed Policy In the early 1990s, many policy makers saw comprehensive economic sanctions, imposed under *Resolution 687*, as an ethical and non-violent policy tool. Though Iraq sanctions produced some significant disarmament results, they failed to achieve all their policy goals and they have deeply harmed powerless and vulnerable Iraqi citizens. The Security Council implicitly accepts such a negative assessment, since it no longer uses comprehensive economic sanctions in other peace and security crises.

3. Warnings of Civilian Harm Suffering in Iraq is not an unexpected collateral effect, but a predictable result of the sanctions policy. Security Council members have received warnings of the humanitarian emergency in Iraq and the damage done by sanctions since shortly after the Gulf War. Warnings have come from three Secretary Generals, many UN officials and agencies including UNICEF, WHO and WFP, and two Humanitarian Coordinators who have resigned in protest. A Select Committee of the UK House of Commons offered a very negative judgment as well.

4. Causes of Suffering Sanctions are not the sole cause of human suffering in Iraq. The government of Iraq bears a heavy burden of responsibility due to the wars it has started, its lack of cooperation with the Security Council, its domestic repression, and its failure to use limited resources fairly. However, the UN Security Council shares responsibility for the humanitarian crisis. The United States and the United Kingdom, who use their veto power to prolong the sanctions, bear special responsibility for the UN action. No-fly zones, periodic military attacks, and threats of regime-change block peaceful outcomes, as do vilification of Saddam Hussein, pro-sanctions propaganda, and other politicization of the crisis. Though real concerns about Iraq's security threat undoubtedly are legitimate, commercial interests, especially control over Iraq's oil resources, appear to be a driving force behind much of the policy making.

5. Oil-for-Food Sanctions advocates proposed Oil-for-Food under *Resolution 986* as a temporary solution to the humanitarian crisis. Oil-for-Food materially improved conditions in Iraq in contrast to the early days of the sanctions. But Oil-for-Food failed to resolve the humanitarian crisis, much less provide a long-term solution for Iraq. Punitive deductions for war reparations weaken the program as do unacceptable delays in delivery (less than 60% of all items ordered from oil sales since December 1996 have actually arrived in Iraq). Politically-motivated blocks and "holds," imposed almost entirely by the United States, have plagued the program as

well. Consequently, there has been little repair and renewal of Iraq's badly-deteriorated infrastructure, including water treatment, electricity, and public health. Oil-for-Food has failed to improve sufficiently the nutrition and health of Iraqi citizens, who continue to suffer from conditions drastically worse than the pre-sanctions period. Less than \$200 per year per capita has arrived in Iraq under the program. Studies have amply documented a substantial rise in mortality of children, five years of age and below and credible estimates suggest that at least 400,000 of these young children have died due to the sanctions. Various reforms, including *Resolution 1284* have proven ineffective in addressing these problems.

6. Smart Sanctions? The United States and the United Kingdom recently proposed "smart sanctions" as an answer to critics. This reform, embodied in Security Council *Resolution 1409*, offers small improvements, but it has little in common with the "targeted sanctions" that experts have proposed in recent years. Targeted sanctions would directly impact Iraq's leaders, by freezing their assets and preventing their international travel, without damage to ordinary Iraqis. Resolution 1409 is grossly inadequate as a solution to the Iraq crisis. The enormous Goods Review List of items with possible military use suggests further blockage of goods and delays, as well as disappointingly little substantial advance. Meanwhile, a dispute over pricing methods has greatly reduced Iraq's oil sales, drastically depleting the funds of the humanitarian program, while the United States threatens to attack Iraq and impose a change of regime.

7. International Law The Security Council has clear obligations under international human rights and humanitarian law, which provide means to assess its sanctions record. A number of policy papers by UN agencies and bodies, as well as studies by legal scholars, have determined that the Council is in serious violation of its responsibilities in the case of Iraq. The Council has committed both procedural and substantive violations, by failing to conduct regular assessments of the humanitarian impact of the sanctions and by directly violating a number of important rights including the rights of children to protection and the right to life itself.

8. POLICY RECOMMENDATIONS

A solution to the crisis in Iraq must be based on a comprehensive agreement between the United Nations and the Government of Iraq in which many important and interrelated issues would be addressed. The United Nations must begin with five steps:

- Comprehensive economic sanctions must be lifted,
- The UN "escrow account" must be eliminated,
- Free trade (excepting military goods) must be re-established,
- Foreign investments in Iraq must be permitted, and
- Foreign assets of Iraq must be unfrozen so as to normalize its external economic relations

Such change will not be free of risk. The government of Iraq cannot be counted on to make benign and peaceful policy choices, or to promote automatically the well-being of its people. In this context

- Robust weapons monitoring must be reintroduced, to insure disarmament and eliminate production programs for mass destruction weapons,

- Disarmament in Iraq must be complemented by regional approaches to disarmament, especially elimination of mass destruction weapons and weapons programs in other regional states

The Government of Iraq must give firm assurances to the international community, as a part of reciprocal undertakings, that

- It will renounce all plans to buy, build or use weapons of mass destruction and related delivery systems
- It will cooperate fully with ongoing UN arms inspection arrangements
- It will establish friendly and cooperative relations with neighboring countries
- It will take all necessary steps to address the humanitarian emergency as soon as funds become available to do so
- It will honor minority rights, including offering special status to the Kurdish areas, and it will take steps to honor its human rights obligations.

If the government of Iraq fails at any time to provide adequate means for inspection and arms control, then:

- Narrowly-targeted sanctions, including financial and travel penalties, should be directed at Iraq's leaders,
- Time limits must be part of such a new sanctions regime,
- Clear criteria for lifting and modification must also be part of the new sanctions regime,
- Regular humanitarian assessments must also be part of the new sanctions as well, so that the Council will be aware of any possible impact on the broader Iraqi population.

If Iraq is to return to normalcy, and if it is to be persuaded to agree to international accords, it must be freed from constant military pressure, threats and intimidation. The Security Council's decisions, not unilateral action by one or two powerful states, must prevail. In this framework

- "No-Fly zones" and constant aerial threats and attacks must be eliminated,
- Unilateral military attacks must be ruled out as completely unacceptable and illegal, and
- Other efforts directed towards "regime change," including force build-ups, military aid to opposition forces, and covert destabilization and assassination campaigns must cease.

Further elements in the design for post-sanctions Iraq are also required, in order to address immediate humanitarian concerns, long-term development needs and safeguards for minorities. In such a framework:

- Emergency relief, to bring a speedy end to the human suffering, must be put in place with the help of the international community,
- Large-scale physical reconstruction, to build a new infrastructure for Iraq, must be set in motion, including foreign investments, and
- Safeguards for minorities such as the Kurds must be introduced, including federative structures and possibly a UN presence to monitor and promote human rights in the post-sanctions era.

Chapter 1 - Introduction

The United Nations Security Council has maintained comprehensive economic sanctions on Iraq since August 6, 1990.¹ The international community increasingly views the sanctions as illegitimate and punitive, because of well-documented humanitarian suffering in Iraq and widespread doubts about the sanctions' effectiveness and their legal basis under international humanitarian and human rights law. This paper examines key legal and humanitarian issues of the current sanctions arrangements and it argues for urgent, fundamental changes.

When first imposed, four days after Iraq's invasion of Kuwait, under Resolution 661, the comprehensive sanctions appeared legitimate, as a short-term means to press Iraq to withdraw. When redefined on April 3, 1991, under Resolution 687, after the US-led military coalition had forced Iraq's withdrawal, the sanctions likewise commanded broad support, as a means to compel Iraq's compliance with Security Council resolutions and in particular to end Iraqi possession of weapons of mass destruction.² Iraq eventually met (however reluctantly) many of the UN requirements and the United Nations supervised substantial Iraqi disarmament, including extensive dismantlement of Iraq's mass-destruction weapons, weapons programs and delivery systems.³

Questions still remain about the extent of Iraq's compliance, but many experts believe that Iraq has been substantially disarmed and has little capacity left in the four banned weapons types.⁴ Residual concerns and conjectures must be weighed against the sanctions' present ineffectiveness, their great harm to innocent civilians, the clear option of targeted sanctions, and the discredit that the status quo brings to the United Nations, the Security Council and international law more generally. Though the overwhelming opinion of the international community favors change, comprehensive economic sanctions remain firmly in place and criteria for their lifting remain imprecise, fluid and subjective.⁵

A large majority of Security Council members now oppose the comprehensive sanctions or have serious reservations about them, but they cannot lift them,

¹ The sanctions, imposed under Resolution 661, barred imports and exports, except medical and humanitarian supplies and they also forbade foreign investments. Foreign assets of Iraq were also largely frozen. Resolution 986 (1995) allowed for exceptions to the sanctions for the export of oil and the import of approved humanitarian supplies, eventually implemented in 1996.

² The sanctions, as redefined under Resolution 687, seek to eliminate Iraq's weapons of mass destruction and delivery systems; they also seek return of prisoners of war and property taken during the Gulf War, they establish the principle of compensation for war damage, they insist that Iraq's international debts be honoured and they demand that Iraq refrain from terrorism.

³ This issue is discussed further below, in chapter 6, with a number of opinions cited.

⁴ The four banned categories are: nuclear weapons, chemical weapons, biological weapons, and missile delivery systems. For an assessment by the Council itself, see the reports of 1999 in S/1999/356. In August 2000, US Undersecretary of State Thomas Pickering told journalists that Iraqi President Saddam Hussein "has not, at least in so far as we can tell, reconstituted his weapons of mass destruction." (transcript of digital video conference, August 3, 2000, source US Department of State). For a discussion of this issue see chap. 6.4 below.

⁵ Security Council Resolution 1284 (1999) added additional criteria to those specified in Resolution 687 (1991) and all criteria remained vague. Many at the UN have spoken of "moving the goalposts," but the metaphor of precise goalposts is itself misleading, since criteria have never been clear.

because vetoes of two Permanent Members, the United States and the United Kingdom, block action for comprehensive reform. Indeed, most discussions of Iraq sanctions have taken place in secret, among the Council's five Permanent Members, side-stepping the ten Elected Members and keeping the international community in the dark. Ambassador Peter van Walsum of the Netherlands, Chairman of the Iraq Sanctions Committee in 1999-2000, spoke in an open meeting of the Council in November 1999 about the intense frustrations of elected Council members at this lack of information, transparency and accountability.⁶

Such secret diplomacy by the Great Powers shows disregard for the international community and for the lives and well-being of the people of Iraq. Recent adjustments by the Council in Resolution 1409 (May 14, 2002) fall far short of the needed fundamental change. Just two Council members negotiated in secret the Goods Review List, at the heart of the new resolution. Instead of such gestures, the international community should insist on the lifting of comprehensive economic sanctions. There must also be program to help re-build and restore the country's civilian economy and to promote the democratic rights and human development of the Iraqi people.

All parties agree that the Iraqi people's basic needs are unmet. Governments, UN agencies, the press, and international NGOs all acknowledge that the Iraqi population is living through a long humanitarian crisis. Those who defend the sanctions policy insist on blaming the government of Iraq and its leader, Saddam Hussein, for all the suffering, insisting that the humanitarian situation can only improve if the leader satisfies the demands of the US and the UK or, better still, relinquishes power. Such an approach holds Iraq's humanitarian suffering hostage to international power politics, the hidden play of commercial interests, and the goal of "regime change."

Sanctions do not cause all distress in Iraq. The government of Iraq must bear a large share of responsibility, because of its failure to comply with Council requirements and because of its failure to use all resources at its disposal to meet the humanitarian crisis. But as long as the United Nations maintains control over economic life in Iraq, the Security Council bears a *joint* responsibility with the Iraq government for the health and well being of the population. The Council has the means to alleviate the economic crisis, but it has failed to discharge its responsibility to act in accord with universal human rights and humanitarian standards, as we shall see in more detail below.

The sanctions put economic pressure on the population and supposedly use civilian suffering as a tool in arms control negotiations with Iraq's government. In theory, the deprived and angry populace will press their rulers to change policy. If policy does not change, the people are expected to reject the rulers and rise against them. This has proved to be a simplistic and false model. Politics in Iraq have not worked this way. To the contrary, the sanctions appear to have strengthened the government, by increasing its economic role and its symbolic appeal.

⁶ See verbatim transcript of the Council meeting of November 19, 1999. Van Walsum said his frustrated delegation was beginning to refer to the Council's permanent members as the "Hereditary Five."

The suffering of Iraq's civilian population must command primary attention and legal priority. The Security Council should not continue to pursue arms control goals with a mechanism that exacts such a high human cost. Rather, the Council should move towards alternatives that the overwhelming majority of international opinion has long favored:

- lift comprehensive economic sanctions
- abolish the UN "escrow" account
- establish free trade in non-military goods
- restore foreign investments
- unfreeze Iraq's foreign assets
- establish robust UN weapons monitoring
- require agreement by Iraq for disarmament, cooperation with arms inspection and friendly relations with its neighbors, in a framework of regional disarmament
- impose, if needed, sanctions narrowly targeted at Iraqi government leaders, subject to time limits, clear criteria for lifting and regular humanitarian assessments
- eliminate "no fly" zones, "regime-change" programs and military threats directed at Iraq
- provide international humanitarian assistance to help Iraq overcome its humanitarian crisis as swiftly as possible
- organize programs to promote large-scale reconstruction of Iraq
- establish safeguards for Iraq's minorities, including special arrangements for the Kurdish areas in the North and possibly a UN presence to monitor and promote human rights

In the chapters that follow, this report will consider the flaws in comprehensive economic sanctions, the question of responsibility and the shortcomings of the oil-for-food program. The report will then consider the current "smart sanctions" in contrast to longstanding proposals for "targeted sanctions" aiming at political leaders. Finally, the report will look at the Security Council's responsibilities under international humanitarian and human rights law and it will conclude with a discussion of recommended alternatives.

Chapter 2 - Comprehensive Economic Sanctions: A Badly-Flawed Policy

When the Security Council first imposed sanctions on Iraq in 1990, many diplomats, scholars and citizens believed that comprehensive economic sanctions were innovative, benign and non-violent. Some believed that sanctions offered an ethical foreign policy tool to combat threats to peace and security without causing unintended suffering.⁷

It is now clear that comprehensive economic sanctions in Iraq have hurt large numbers of innocent civilians not only by limiting the availability of food and medicines, but also by disrupting the whole economy, impoverishing Iraqi citizens and depriving them of essential income, and reducing the national capacity of water treatment, electrical systems and other infrastructure critical for health and life. People in Iraq have died in large numbers. The extent of death, suffering and hardship may have been greater than during the armed hostilities, especially for civilians, as we shall see in more detail below.⁸ Comprehensive sanctions in Iraq, then, are not benign, non-violent or ethical.

The 1977 Protocols to the Geneva Conventions on the laws of war include a prohibition of economic sieges against civilians as a method of warfare. Ironically, legal consensus does not yet define economic sanctions as subject to these laws, which apply in warfare and which legally require belligerents to target military rather than civilian objectives. Sanctions operate in a hazy legal status between war and peace.⁹ Unlike the dramatic, visible toll of military action, sanctions take their effect gradually, indirectly and with low visibility.

UN Secretary General Boutros Boutros-Ghali recognised the growing doubt about the legal and moral status of comprehensive sanctions when he wrote in 1995 that they

*raise the ethical question of whether suffering inflicted on vulnerable groups in the target country is a legitimate means of exerting pressure on political leaders whose behaviour is unlikely to be affected by the plight of their subjects*¹⁰

The Security Council has implicitly accepted this judgement. In recent years, it has always imposed either narrowly-targeted sanctions that seek to pressure rulers and elites directly, or embargos of arms sales to belligerents, or embargos of strategic resources fueling conflicts like diamonds. The Council has not imposed

⁷ For a discussion of the early optimism about sanctions, see Thomas G. Weiss, David Cortright, George A. Lopez and Larry Minear, *Political Gain and Civilian Pain* (Oxford, 1997).

⁸ See especially section 5.2.

⁹ A case can be made that Iraq sanctions, first imposed in wartime, should be subject to the Geneva Conventions.

¹⁰ United Nations document A/50/60, *Supplement to an Agenda for Peace*, January 1995.

comprehensive economic sanctions since 1994 and no one expects that it will adopt this policy again.¹¹

Iraq sanctions do not effectively target or affect political or military elites. Rather, they hit the weakest and most vulnerable members of Iraqi society, those with the least ability to influence decisions and who are least able to compete for scarce resources. The primary victims of the sanctions – children, the elderly, the sick, the poor -- are also those least responsible for government policy and least able to change policy. Even so, advocates in Washington have insisted that sanctions on Iraq are necessary and justified, as a means to pressure an evil dictator and keep him “in a box.” Such imperatives have found declining acceptance in the rest of the world, where people increasingly see comprehensive economic sanctions as a blunt and cruel weapon. As UN Secretary-General Kofi Annan stated in 2000:

*just as we recognize the importance of sanctions as a way of compelling compliance with the will of the international community, we also recognize that sanctions remain a blunt instrument, which hurt large numbers of people who are not their primary targets.*¹²

The sanctions on Iraq have left the country impoverished, isolated and socially disrupted, they resulted in widespread illness and death of innocent civilians, and they have tightened the grip of a repressive political regime.

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¹¹ After Iraq, the Council imposed two further comprehensive economic sanctions – on the Federal Republic of Yugoslavia (Resolution 757 of May 30, 1992)(suspended November, 1995); and on Haiti (Resolution 917 of May 6, 1994)(lifted September 1994). For well over six years, the Iraq sanctions have been the only sanctions of this type in force. The Council may be moving towards (renewable) time-limited sanctions. Such limits reduce the likelihood of sanctions lasting for a very long period.

¹² Press Release, “Secretary-General Reviews Lessons Learned During ‘Sanctions Decade’ In Remarks To International Peace Academy Seminar,” April 17, 2000, SG/SM/7360.

Chapter 3 - Sanctions and the Civilian Population

3.1. Early Warnings

Iraq sanctions have not caused suffering as an unexpected collateral effect or a lesser evil that passed unnoticed. The suffering was not only foreseeable (and foreseen) in advance, but dozens of studies have documented it in great detail for more than a decade.

From the early days of the sanctions, well-informed UN officials and envoys warned about dire humanitarian consequences. In March 1991, Under Secretary General Martti Ahtisaari reported that, directly after the massive bombing of the Gulf War, the situation was especially troubling:

*most means of modern life support have been destroyed or rendered tenuous. Iraq has, for some time to come, been relegated to a pre-industrial age, but with all the disabilities of post-industrial dependency on an intensive use of energy and technology.*¹³

Ahtisaari pointed out that Iraq needed more than just emergency relief of food and medicine. The power grid and the communications system had been badly damaged, he said, and needed repair.

*The far-reaching implications of this energy and communications vacuum as regards urgent humanitarian support are of crucial significance for the nature and effectiveness of the international response.*¹⁴

In July of the same year, the Secretary General's Executive Delegate, Sadruddin Aga Khan, submitted a comprehensive report based on a country-wide assessment of conditions. The Executive Delegate's report spoke of immediate needs for reconstruction as well as humanitarian assistance, setting the cost of restoring pre-war conditions at \$22 billion. Calculating only the most urgently-needed initial reconstruction costs, he estimated that Iraq would require \$6.8 billion in the first year, for which substantial quantities of Iraqi oil would have to be sold.¹⁵ Many well-known international experts and eminent persons, as well as more than a dozen agencies, were involved in producing the report, which said:

*Our aim has been to be sober, measured and accurate. We are neither crying wolf nor playing politics. But it is evident that for large numbers of the people of Iraq, every passing month brings them closer to the brink of calamity. As usual, it is the poor, the children, the widowed and the elderly, the most vulnerable amongst the population, who are the first to suffer.*¹⁶

¹³ UN document S/22366, 20/3/91, paragraph 8.

¹⁴ *Report to the Secretary-General on humanitarian needs in Kuwait and Iraq in the immediate post-crisis environment by a mission to the area led by Martti Ahtisaari, Under-Secretary-General for Administration and Management*, March 20, 1991, paragraph 9, available online.

<http://www.un.org/Depts/oip/reports/S22366.html>

¹⁵ UN document S/22799, July 17, 1991, paragraph 29.

¹⁶ *Report to the Secretary-General dated July 15, 1991 on humanitarian needs in Iraq prepared by a mission led by the Executive Delegate of the Secretary-General for humanitarian assistance in Iraq*,

The report concluded, issuing a clear call:

It remains a cardinal humanitarian principle that innocent civilians – and above all the most vulnerable – should not be held hostage to events beyond their control. Those already afflicted by war's devastation cannot continue to pay the price of a bitter peace. It is a peace that will also prove to be tenuous if unmet needs breed growing desperation.¹⁷

Instead of making such humanitarian provision to avert the impending catastrophe, the Security Council passed Resolutions 706 and 712 (August 15 and September 19, 1991) which put a low cap on Iraq's allowed oil sales and deducted about a third of the oil revenues to pay for war reparations, weapons inspectors and UN administrative expenses. The oil sales ceiling would have yielded (after deductions) about \$1.1 billion every six months for Iraq's humanitarian needs,¹⁸ a small fraction of Sadruddin Aga Khan's estimate for essential spending. The stage was set for rejection by Baghdad and years of fruitless manoeuvring. Neither side gave priority to the growing humanitarian crisis.

Nearly five years later, on May 20, 1996, the Council and the government of Iraq finally agreed to an Oil-for-Food program, under Resolution 986. The agreement allowed for the sale of oil to pay for humanitarian and other vital imports.¹⁹ This step, while significant in some respects, was to prove woefully inadequate as a solution to the humanitarian emergency.²⁰

3.2 A Steady Flow of Critical Reports

Throughout the 1990s, regular surveys by the Food and Agriculture Organisation/World Food Programme documented the lack of food in Iraq and its effect on vulnerable groups. In 1996 the World Health Organisation reported on health, morbidity and mortality data for 1989 -1994 and commented:

Comparing levels of the infant mortality rate (IMR) and the mortality of children under 5 years old during the pre war period (1988-1989) with that during the period of the sanctions (since 1990), it is clear that the IMR has doubled and the mortality rate for children under 5 years old has increased six times.²¹

S/22799, July 17, 1991, available online at <http://www.cam.ac.uk/societies/casi/info/undocs/s22799.html> .

¹⁷ *Ibid.*

¹⁸ UN Security Council Resolution 706 specified a ceiling of \$1.6 billion worth of oil sales every six months. From that amount, deductions for the Compensation Commission and UN expenses had to be made, equalling about one third. For an analysis of this period, see Ian Johnstone, *Aftermath of the Gulf War: An Assessment of UN Action*. Occasional Paper of the International Peace Academy (Boulder, 1994).

¹⁹ On this date, a Memorandum of Understanding was signed between the UN Secretariat and the Government of Iraq.

²⁰ For a detailed discussion of the Oil-for-Food Program and its deficiencies, see Chapter 5 below. Initially, Iraq was severely restricted in its oil sales, but, as we will show below, the program had more fundamental flaws.

²¹ WHO, March 1996, *The Health conditions of the population in Iraq since the Gulf Crisis*: Section 4, Impact on Child malnutrition.

Various agencies, including UNICEF, presented reports to the Council, cataloguing the suffering, but the US and the UK used their diplomatic weight and threatened use of the veto to block remedial action beyond the Oil-for-Food program.²² These two countries also used their considerable influence with the news media to downplay the seriousness of the humanitarian situation in Iraq, accusing humanitarian agencies of bad science or even complicity with the Iraqi government.²³ The two partners portrayed themselves as well-meaning, innocent victims of Saddam's finely-tuned propaganda machine.

Legal and interpretive reports also appeared that raised the broader issue of sanctions policy within international law and policy. In 1996, the Graca Michel report to the General Assembly on the *Impact of Armed Conflict on Children* concluded that sanctions'

*humanitarian exemptions tend to be ambiguous and are interpreted arbitrarily and inconsistently.... Delays, confusion and the denial of requests to import essential humanitarian goods cause resource shortages [Their effects] inevitably fall most heavily on the poor.*²⁴

The following year, the UN Committee on Economic, Social and Cultural Rights, headed by the distinguished Australian jurist Philip Alston, issued a report expressing concern that the Security Council, in establishing and maintaining sanctions, did not adequately take into account its responsibilities under economic, social and cultural rights law. The report stated that sanctions

*often cause significant disruption in the distribution of food, pharmaceuticals and sanitation supplies, jeopardize the quality of food and the availability of clean drinking water, severely interfere with the functioning of basic health and education systems, and undermine the right to work.*²⁵

As such, the report continued, sanctions "have a major additional impact on the enjoyment of economic, social and cultural rights."²⁶

The Council's Oil-for-Food program eased the worst of the food shortages as supplies began to arrive in mid-1997, but reports from the field suggested that the situation remained very serious.²⁷

²² See: UNICEF, "The Status of Children and Women in Iraq: A Situation Report," September 1995; WFP, News Release: "Time running out for Iraqi children," September 26, 1995; CESR, "Unsanctioned Suffering," May 1996, available online at <http://www.cesr.org/text%20files/sanct.PDF>; UNHCR, "Humanitarian situation in Iraq: Sub-Commission decision 1997/119," UN Document E/CN.4/SUB.2/DEC/1997/119, August 28, 1997; FAO Press Release, "FAO Warns of Danger to Near East if Outbreak of Animal Diseases in Iraq is not Contained - Situation Could Threaten Near East Food Security," February 10, 1999.

²³ See for example the State Department's web site on Iraq sanctions and spokesman James Rubin's comments on the television program "Paying the Price: Killing the Children of Iraq" by John Pilger, first broadcast on ITV in the UK on March 6, 2000.

²⁴ Graca Michel, *Impact of Armed Conflict on Children A/51/306*, annex, par 128.

²⁵ "The Relationship Between Sanctions and Respect for Economic, Social and Cultural Rights," UN Committee on Economic, Social and Cultural Rights, E/C.12/1997/8.

²⁶ *Ibid.*

Responding to the many troubling reports and to the waning political support for sanctions, the chairman of the Security Council's Iraq Sanctions Committee, Ambassador António Monteiro of Portugal, convened a series of meetings with Council colleagues during 1998. He brought together the chairmen of the Council's sanctions committees, all elected members, to discuss the Council's humanitarian responsibilities and the steps that it should take to improve sanctions more generally. On October 30, the group circulated a paper to the whole Council, setting forth their concerns with a series of reform proposals. They noted that sanctions

*often produce undesired side effects for the civilian population, including children. The decisions of the Security Council to impose sanctions imply the Council's obligation to ensure that proper implementation of sanctions does not result in violations of human rights and international humanitarian law, and its responsibility to do all within its power for the respect of the basic economic, social and cultural rights, and other human rights of the affected population.*²⁸

The paper insisted on the Council's responsibility to monitor the impact of its sanctions, the need for clear criteria for lifting of sanctions, and the need to move towards "targeted" sanctions that would impact on top leaders, not the general population of the offending state.

Towards the end of 1998, the legitimacy of the sanctions/disarmament regime was enormously compromised by evidence that the United States had used the UN weapons inspection teams of UNSCOM to carry out espionage and covert action.²⁹ UNSCOM issued an alarmist report about the state of Iraq's disarmament, said to have been strongly influenced by US pressure. In December, the US and the UK threatened to attack Iraq, to force compliance with the inspections. With military action imminent, the Chairman of UNSCOM, Richard Butler, ordered the weapons inspectors withdrawn. US-UK aerial attacks, beginning on December 16, continued for four days.³⁰ Discredited UNSCOM was never to return.

Though Council membership changed at the turn of the year, momentum for sanctions reform continued. The reformers succeeded in getting a watered-down version of the October proposals embodied in a statement by the President of the Council on January 29, 1999, giving some of the ideas official status.³¹ Also in the October spirit, elected members persuaded the Council to establish three assessment "panels" on Iraq under the chairmanship of Ambassador Celso Amorim of Brazil. One panel considered arms control issues, a second looked at prisoners of war and other issues, while a third focused on the humanitarian situation. In its report

²⁷ For details on Oil-for-Food, see Chapter 5 below.

²⁸ This text, known as a "non-paper," was never issued as a publication of the Security Council. For the full text see <http://www.globalpolicy.org/security/sanction/committee-chairs/1998/1030papr.htm>.

²⁹ See Barton Gellman, "U.S. Spied on Iraq Via U.N.," *Washington Post*, March 2, 1999.

³⁰ Republican members of Congress charged US President Bill Clinton with having launched these attacks to draw attention away from his impeachment hearings. Such charges demonstrate how very political and subjective the Iraq issue had become.

³¹ S/1999/92.

of March 1999, the humanitarian panel set forth the alarming decline in living standards in Iraq, including health, food, infrastructure and education

*In marked contrast to the prevailing situation prior to the events of 1990-91, the infant mortality rates in Iraq today are among the highest in the world, low infant birth weight affects at least 23% of all births, chronic malnutrition affects every fourth child under five years of age, only 41% of the population has regular access to clean water, 83% of all schools need substantial repairs.*³²

The report concluded with an implicit call for re-development and normalization of the Iraqi economy:

*In presenting the above recommendations to the Security Council, the panel reiterates its understanding that the humanitarian situation in Iraq will continue to be a dire one in the absence of a sustained revival of the Iraqi economy, which in turn cannot be achieved solely through remedial humanitarian efforts.*³³

The report provides a measure of how far the sanctions had lost support within the Council's membership.

In Baghdad, UN Humanitarian Coordinator, Hans von Sponeck, was raising alarms. His predecessor, Dennis Halliday, had resigned in the summer of 1999, in protest against the sanctions. Now von Sponeck himself was shocked by what he saw and was beginning to speak out strongly to visiting UN officials and others. A visiting delegation reported on this conversation:

*The oil for food program provides him with \$177 per person per year – 50 cents a day – for all of the needs of each Iraqi citizen. He said, “Now I ask you, \$180 per year? That’s not a per capita income figure. This is a figure out of which everything has to be financed, from electrical service to water and sewage, to food, to health – the lot . . . that is obviously a totally, totally inadequate figure.”*³⁴

Meanwhile, UNICEF's 1999 survey of child mortality in Iraq provided some chilling facts. In a summary of the study, prepared for the distinguished British medical journal *Lancet*, researchers Mohamed Ali and Iqbal Shah presented the following findings:

³² *Report of the second panel established pursuant to the note by the president of the Security Council S/1999/100 concerning the current humanitarian situation in Iraq*, UN document S/1999/356, 15, para 43.

³³ *Ibid.*, para 58.

³⁴ From a report on a meeting with a delegation from Physicians for Social Responsibility on April 5, 1999, available at www.scn.org/ccpi/UNandUSreports.html.

*Infant mortality rose from 47 per 1000 live births during 1984–89 to 108 per 1000 in 1994–99, and under-5 mortality rose from 56 to 131 per 1000 live births.*³⁵

On June 21, the UN Sub-Commission on the Promotion and Protection of Human Rights published a working paper by Marc Bossuyt, its expert representative from Belgium, which called sanctions in Iraq “unequivocally illegal” and said they had caused a humanitarian disaster “comparable to the worst catastrophes of the past decades.”³⁶ Later, the outraged US ambassador, charged that the report was “incorrect, biased and inflammatory.”³⁷

In addition to death, disease and general impoverishment, some reports showed that the sustained sanctions in Iraq were having numerous other negative effects. Emigration was sapping away many of the best and brightest. Workers’ skills were disappearing after years of mass unemployment. Women had lost jobs disproportionately in the shrunken workforce. Stress and psychiatric illnesses had ravaged families. Social cohesion had steadily unravelled.³⁸ The Security Council became increasingly aware of these broader issues. Its humanitarian panel spoke of such effects in 1999, noting that observers often report alarming signs such as:

*Increase in juvenile delinquency, begging and prostitution, anxiety about the future and lack of motivation, a rising sense of isolation bred by absence of contact with the outside world, the development of a parallel economy replete with profiteering and criminality, cultural and scientific impoverishment, disruption of family life. WHO points out that the number of mental health patients attending health facilities rose by 157% from 1990 to 1998.*³⁹

Many Council members hoped that the panel reports would lead to remedial action and that the Council would eventually lift the comprehensive sanctions, moving towards sanctions targeted at Saddam Hussein and his inner circle. Many also hoped for regular monitoring of sanctions’ humanitarian impact, as agreed in the January presidential statement. Negotiations began towards a comprehensive new resolution, but Washington held firm against substantive change and the UK, unable to persuade its partner to adopt a more reform-oriented policy, chose to maintain a status quo posture as well.

Because of deep differences, the Council did not adopt a new resolution until the end of 1999. A divided Council finally adopted Resolution 1284 on December 17 with

³⁵ Mohamed M Ali and Iqbal H Shah, “Sanctions and childhood mortality in Iraq”, *The Lancet* 2000; 355: 1851–57. See Section 4.3 for a discussion of the debate about sanctions and mortality. The “autonomous region” refers to the North, where a separate and better-funded program was in place.

³⁶ *The Adverse Consequences of Economic Sanctions for the Enjoyment of Human Rights*, E/CN.4/Sub.2/2000/33).

³⁷ The US ambassador, George Moose, made his comment when the report was being considered by a UN body in August 2000. See <http://www.us-mission.ch/press2000/0817moose.htm>.

³⁸ “Special Topics on Social Conditions In Iraq, An Overview Submitted By The UN System To The Security Council Panel On Humanitarian Issues,” Baghdad, March 24, 1999.

³⁹ UN document S/1999/356, Annex II, “Report of the second panel established pursuant to the note by the president of the Security Council of January 30, 1999 (S/1999/100), concerning the current humanitarian situation in Iraq”, March 30, 1999, paragraph 25.

abstentions by three Permanent Members: Russia, China and France. It fell far below the earlier hopes of sanction reformers such as Argentina, Brazil, Canada, and Slovenia, though it did incorporate a few of the moderate panel suggestions. It lifted the cap on oil sales completely⁴⁰ and it marginally relaxed the system of goods review. It also set forth rules for an improved system of weapons inspection. But it proposed neither targeting, nor humanitarian monitoring procedures, the two most important reform proposals. Further, it left more vague than ever the conditions under which the Council would consider lifting or “suspending” the sanctions.⁴¹

Even in the UK parliament, scepticism about Iraq sanctions abounded. On January 27, 2000, after ten months of hearings, the House of Commons Select Committee on International Development issued a report that proved a sharp rebuke to the government’s sanctions policies.⁴² The Executive Summary stated that:

*There is a clear consensus that the humanitarian and developmental situation in Iraq has deteriorated seriously since the imposition of comprehensive economic sanctions whilst, at the same time, sanctions have clearly failed to hurt those responsible for past violations of international law as Saddam Hussein and his ruling elite continue to enjoy a privileged existence.*⁴³

In February, UN Humanitarian Coordinator von Sponeck announced his resignation and on 29 March, as he prepared to leave Baghdad, he explained that “I can no longer be associated with a program that prolongs suffering of the people and which has no chance to meet even basic needs of the civilian population.”⁴⁴ Later, he would declare that “lawlessness of one kind does not justify lawlessness of another kind,” and ask “how long must the civilian population be exposed to such punishment for something that they’ve never done?”⁴⁵ A few weeks later, UN Secretary General Kofi Annan expressed doubts of his own. At a meeting organized by the International Peace Academy and in the presence of most Council ambassadors he concluded that:

The record of the “Sanctions Decade” has raised serious doubts not only about the effectiveness of sanctions, but also about their scope and severity when innocent civilians often become victims not only of their own government, but of the actions of the international community as well.

When robust and comprehensive economic sanctions are directed against

⁴⁰ Though the Council lifted the cap, it was clear that Iraq could not produce or sell much more oil, because the ban on investments and the holds on oil equipment contracts left Iraqi oil facilities in bad disrepair.

⁴¹ For another interpretive overview of Iraq sanctions, see David Cortright and George Lopez, *Sanctions and the Search for Security*, (New York, 2002), ch. 2, “The Iraq Quagmire.”

⁴² Select committees are all-party committees, not subject to party discipline. It would appear that the UK government has not commanded a majority in the Commons on this issue for some time and maintains the policy only by imposing party discipline on its recalcitrant backbenchers in regular parliamentary votes.

⁴³ United Kingdom, House of Commons, Select Committee on International Development, Second Report, Executive Summary, para 17 (For a more extensive quotation from this report, see Appendix II).

⁴⁴ Reuters, “Top UN Official Leaves Iraq, says programme failed,” 29 March 2000.

⁴⁵ Open Letter to Mr. Peter Hain, *The Guardian*, January 3, 2001.

authoritarian regimes, a different problem is encountered. Then, tragically, it is usually the people who suffer, not the political elites whose behaviour triggered the sanctions in the first place.

...sanctions remain a blunt instrument, which hurt large numbers of people who are not their primary targets.⁴⁶

On the same day, Canadian Foreign Minister Lloyd Axworthy spoke to the Council during a special session on sanctions and insisted that “sanctions must reflect the will of the international community – not just the interests of its more powerful members.”⁴⁷ Three months later, French Foreign Minister Hubert Védrine stated that his country considered Iraq sanctions “cruel, ineffective and dangerous.”⁴⁸

In spite of these many warnings, pressures, legal opinions and expressions of humanitarian concern, the US-UK gave few concessions to the critics, insisting always on Iraqi perfidy. According to insiders, the US stepped up pressure on Council members for silence and conformity. The most reform-oriented ambassadors, including Amorim himself, were recalled by their governments or assigned to other postings. Activist junior diplomats likewise moved on. The reform vision faded, though deep opposition continued within the Council’s chambers.

⁴⁶ Press Release, “Secretary-General Reviews Lessons Learned During ‘Sanctions Decade’ In Remarks To International Peace Academy Seminar,” April 17, 2000, SG/SM/7360 The conference was largely sponsored by the Canadian government.

⁴⁷ Speech by Lloyd Axworthy to the UN Security Council, April 17, 2000, text as posted on the Canadian Mission web site at www.un.int/canada/html/s-17apr2000axworthy.htm.

⁴⁸ Interview with *al-Hayat* daily, August 1, 2000, text from the web site of the French embassy in Washington at www.info-france-usa.org/news/statmnts/2000/iraq0108.asp.

Chapter 4 - Causes of Human Suffering

4.1. Iran-Iraq War and the Gulf War

Two wars, both started by Saddam Hussein, laid a basis for the harsh impact of comprehensive economic sanctions on Iraq. The Iran-Iraq War of 1980-88 greatly damaged Iraq and reduced it from prosperity to economic difficulty. The United States and the UK (as well as France and the Soviet Union) supported Iraq in that conflict, the longest conventional war of the twentieth century. The support included weapons sales, military advisors and intelligence sharing. The United States provided, among other things, economic assistance, political support, arms, satellite intelligence and the assistance of a US naval battle group.⁴⁹ Iran proved a resilient foe, however, and the war dragged out at great cost in life and material infrastructure.

In addition to great damage on the Iranian side, the Iran-Iraq War destroyed several Iraqi cities and much of Iraq's oil production and refinery system. It caused several hundred thousand Iraqi casualties. It also caused environmental damage, stripped the government of cash, halted infrastructure building and government welfare programs, and caused large human displacement.⁵⁰ Saddam Hussein's dictatorship and internal repression grew still more oppressive during wartime conditions, including a harsh campaign against the Kurds in the North, though both the United States and the UK governments deflected attention from the widespread human rights violations and the regular use of chemical weapons by their ally.⁵¹

In the Gulf crisis and War of 1990-91, Saddam Hussein again attacked a neighboring country – the oil rich emirate of Kuwait – and sought to annex it. This time, the United States and the UK opposed Hussein, along with many other countries. US President George Bush the elder declared: "Our jobs, our way of life, our own freedom ... would all suffer if control of the world's great oil reserves fell into the hands of Saddam Hussein."⁵² A series of United Nations Security Council resolutions called on Iraq to withdraw, imposed sanctions and authorized the use of force by member states. The United States took the lead in a coalition that eventually launched an air war against Iraq, followed by a brief ground campaign that drove Iraq from Kuwait and decisively defeated Iraqi forces.⁵³

⁴⁹ See Dilip Hiro, "Outside Powers," in *The Longest War* (New York, 1991). Though France, Germany and the Soviet Union were the main arms suppliers, the United States and Britain also quietly provided arms and related military assistance. See Mark Phythian, *Arming Iraq: How the U.S. and Britain Secretly Built Saddam's War Machine* (Boston, 1997).

⁵⁰ For an account of the war, see especially Hiro, *op. cit.* and also Efraim Karsh, *The Iran-Iraq War* (Houndmills, 1987), and Charles Tripp, *Iraq and Iraq at War* (Boulder, 1991). Iraq received a large amount of war financing from the oil rich states of the Gulf and as a result purchased a lot of very expensive military hardware.

⁵¹ For policy in Washington, see for example Samantha Power, "A Problem From Hell" (New York, 2002), 171-245. Iraqi forces used chemical weapons in battle approximately 195 times between 1983 and 1988, and also against Iraqi Kurdish civilians, including the notorious case of Halabja, but US military and economic support continued. See also Human Rights Watch, *Human Rights in Iraq* (New Haven, 1990), 113ff.

⁵² *New York Times*, August 16, 1990.

⁵³ For an account of this war, see John Bulloch and Harvey Morris: *Saddam's War* (London, 1991) and Dilip Hiro: *From Desert Storm to Desert Shield* (New York, 1992).

This second war resulted in many Iraqi casualties as well as grave damage to Iraq's infrastructure with losses estimated at \$170 billion.⁵⁴ Much of the damage was due to one of history's heaviest aerial bombardments, a 43-day long campaign conducted largely by units of the US air force.⁵⁵ US President George Bush Sr. claimed publicly that

*we do not seek the destruction of Iraq, nor do we seek to punish the Iraqi people for the decisions and policies of their leaders,*⁵⁶

yet US war planners created conditions for civilian suffering in the course of the intense bombing campaign. As a *Washington Post* article reported a few months afterwards:

*Planners now say their intent was to destroy or damage valuable facilities that Baghdad could not repair without foreign assistance. The worst civilian suffering, senior officers say, has resulted not from bombs that went astray but from precision-guided weapons that hit exactly where they were aimed – at electrical plants, oil refineries and transportation networks... 'What we were doing with the attacks on infrastructure was to accelerate the effect of the sanctions'... If there are political objectives that the U.N. coalition has, it can say, 'Saddam, when you agree to do these things, we will allow people to come in and fix your electricity.' It gives us long-term leverage'... Said another Air Force planner: 'We're not going to tolerate Saddam Hussein or his regime. Fix that, and we'll fix your electricity.'*⁵⁷

United States war planners did not intend to march on Baghdad and install a new government. Instead, the coalition ground forces halted their offensive in southern Iraq and signed a cease-fire with Baghdad. US policy planners expected that the war had weakened Iraq militarily and economically, and that postwar unrest and economic sanctions would succeed in toppling the Saddam regime soon afterwards.

4.2 Civil War, Regime-Change, No-Fly Zones and Military Attacks

After the Gulf War, United States radio broadcasts urged Iraqis to rise up against the Hussein regime. In March, the Shi'a populations in the South and the Kurds in the North staged an insurrection and a brief civil war followed. The uprising failed to

⁵⁴ Peter Sluglett and Marion Farouq Sluglett, "Iraq," in Joel Krieger (ed.), *Oxford Companion to Politics of the World*, p. 435.

⁵⁵ The bombing campaign dropped over 88,000 tons of explosives through the course of six weeks – more explosives than were dropped by the US in the Vietnam war. This comparison was made by Parker Payson, "Figure it Out" in the *Washington Report on Middle East Affairs* in 1991, drawing on Pentagon and Department of Defense figures. <http://www.washington-report.org/backissues/0491/9104055.htm>. See also the Federation of American Scientists information: www.fas.org/man/dod-101/ops/desert_storm.htm.

⁵⁶ Transcript of President Bush Press Conference, quoted in *Washington Post*, February 6, 1991, A21.

⁵⁷ Quoted in Barton Gellman, "Allied Air War Struck Broadly in Iraq; Officials Acknowledge Strategy Went Beyond Purely Military Targets," *Washington Post*, June 23, 1991. See also Thomas J. Nagy, "The Secret Behind the Sanctions: how the U.S. intentionally destroyed Iraq's water supply," *The Progressive* (September, 2001).

topple the government, however, and Baghdad soon brutally repressed it in the South, while US unilateral military intervention under Operation Provide Comfort in the North eventually provided some protection for the Kurdish populations.⁵⁸ The United States continued to insist on “regime change” to sweep the dictator from power.

The Security Council never agreed, however, to “regime change” as a purpose of its sanctions against Iraq. Resolution 687 referred to disarmament and other issues, but it said nothing about a new government. Nevertheless, the United States openly pursued this other goal. On February 15, 1991, at the end of the Gulf War, President Bush had made the point quite bluntly: “(T)here’s another way for the bloodshed to stop, and that is for the Iraqi military and the Iraqi people to take matters into their own hands and force Saddam Hussein, the dictator, to step aside and then comply with the United Nations’ resolution.”⁵⁹ To a greater or lesser extent, regime change has continued to be a goal of US policy ever since.

In April 1991, the US, the UK and France established a “no-fly zone” in the North, originally to protect coalition military operations in the area. This policy banned Iraqi aircraft from flying over the national territory above 36 degrees north latitude. To this the three allies added in August 1992 a “no-fly zone” in the South, excluding Iraqi overflight of territory below 32 degrees. The US and its partners claimed that Security Council Resolution 688 authorized these actions, though the resolution was not adopted (as would be required) under Chapter VII of the UN Charter and said nothing about military measures or Iraq’s aircraft or airspace. The protagonists said their no-fly enforcement overflights were undertaken to protect vulnerable populations of Shi’a in the South and Kurds in the North from further blows by Baghdad, but Turkey was not restrained from striking blows at Kurds in this zone or from repressing its own Kurdish population across the border.⁶⁰ Further, the no-fly zone did not even include several major Kurdish cities in the North. Nor did the southern no-fly offer any clear protection to populations there. France withdrew from northern “no-fly” enforcement at the end of 1996 and southern no-fly at the end of 1998. Thousands of overflights, mainly by US-UK military aircraft, enforced these zones on a daily basis.

In addition to no-fly, the powers launched military operations against Iraq, by aircraft and cruise missiles. France participated in the attack of January 13, 1993 involving 80 strike aircraft, but thereafter the French withdrew from this type of action. United States forces, operating from a variety of ground bases and naval ships, carried out most of these operations, sometimes with UK participation. The main events took place on January 17 (42 cruise missiles) and June 26 (23 cruise missiles), 1993, September 3-4, 1996 (Operation Desert Strike)(44 cruise missiles), and especially

⁵⁸ For an excellent discussion of weak and contradictory justifications of the no-fly policy, see Sarah Graham-Brown, *Sanctioning Saddam: the politics of intervention in Iraq* (London, 1999), 107-121.

⁵⁹ George Bush, *Voice of the Gulf*, February 15, 1991, quoted in CNN special: www.cnn.com/SPECIALS/2001/gulf.war/unfinished/war/index2.htm.

⁶⁰ Turkish aircraft attacking Kurds in the northern zone operated from the same Incirlik Air Base that the US aircraft operated from in their allegedly protective mission. On several occasions, Turkish ground forces crossed the border to attack Kurds, including a force of 10,000 in December 2000. For a good overview of no-fly, see Sarah Graham-Brown, “No-Fly Zones: rhetoric and real intentions,” *MERIP Press Information Note* No. 49 (February 20, 2001).

December 16-19, 1998 (Operation Desert Fox)(hundreds of strike aircraft and cruise missiles).⁶¹ There were also a variety of military deployment operations intended to threaten Iraq, including US operations titled Phoenix Scorpion I, II, III and IV and phases of Operation Desert Thunder, together lasting from November 1997 to December 1998.⁶²

Some of these attacks targeted sites in Baghdad or other populated areas and resulted in civilian casualties. Operation Desert Fox, in December 1998, an intense aerial attack, destroyed a Basra oil refinery and hit a number of targets in Baghdad and other cities, including civilian housing.⁶³ More US-UK air strikes followed Desert Fox as part of no-fly enforcement, under “enlarged rules of engagement”⁶⁴ and an enlarged no-fly zone (to the 33 degree parallel, near the southern suburbs of Baghdad). These more robust and provocative patrols led to hundreds of clashes with Iraqi forces, including attacks on radar and anti-aircraft missile sites, command and control centers, intelligence installations and more, including sites outside the no-fly areas. They resulted in regular civilian casualties.⁶⁵

When the UN Humanitarian Coordinator, Hans von Sponeck, documented these strikes (as well as the destruction and death they caused, and the danger to UN staff), the US and the UK reacted with outrage and demanded his resignation.⁶⁶

Such unilateral military attacks deepened confusion as to the economic sanctions policy and what steps the Iraqi government could be expected to take to cooperate with UN inspectors and to comply with requirements that might lead to the lifting of sanctions. The Russian ambassador at the UN, Sergey Lavrov, remarked in the Council that “it was not possible to ask the [Iraqis] to cooperate and, at the same time, bomb their territory.”⁶⁷

⁶¹ The Federation of American Scientists web site provides considerable information on these and subsequent military operations in Iraq.

⁶² The United States has also built up permanent basis in the Gulf region and it has pre-positioned large amount of supplies and military equipment, mostly directed at Iraq. See Greg Jaffe, “Desert Maneuvers: Pentagon boosts U.S. military presence in the Gulf,” *Wall Street Journal*, June 24, 2002.

⁶³ William Arkin, “Desert Fox Delivery, Precision Undermined its Purpose,” *Washington Post*, January 17, 1999.

⁶⁴ Enlarged rules of engagement meant that US-UK warplanes operated under fewer restrictions and could “engage” Iraqi planes and targets in a much wider set of circumstances. As journalists reported, pilots understood this to mean that they could taunt Iraqi forces and provoke confrontations.

⁶⁵ For a revealing account of US operations in the northern no-fly zone, see Thomas E. Ricks, “Containing Iraq: A Forgotten War,” *Washington Post*, October 25, 2000. Ricks reports that in 16,000 sorties since the beginning of 1997 [to October, 2000], air force pilots have launched more than 1,000 bombs and missiles against 250 targets in northern Iraq. The pilots he quotes are very sceptical about the enterprise. No-fly enforcement also has proved very costly.

⁶⁶ “Impact of air strikes on UN operations in Iraq, January 1, 1999 – September 15, 1999”, prepared by the Humanitarian Coordinator for Iraq, Baghdad, September 26, 1999. Von Sponeck acted on the grounds that the air strikes had humanitarian consequences that fell within his mandate. He resigned less than a year later, under enormous pressure from the US and the UK.

⁶⁷ United Nations Press Release, SC/6833

<http://www.un.org/News/Press/docs/2000/20000324.sc6833.doc.html> .

4.3 Responsibility of the Government of Iraq and the Politics of Vilification

The government of Iraq under Saddam Hussein bears responsibility for the wars and the weapons programs that brought suffering to Iraq's people and its neighbors. The government of Iraq has also been a notorious human rights abuser. The United States and the UK often point to these crimes as rationale and justification for the sanctions. But sanctions cannot legally, under the UN Charter or under any standard of international law, serve as punishment for past acts, heinous as they are. Nor, of course, should the punishment fall on the people of Iraq and not the responsible leaders themselves.

As the international community grew increasingly aware of the human costs of the sanctions, the US and UK worked tirelessly to shift responsibility away from themselves and onto Saddam Hussein. By charging Saddam with non-compliance, they sought to prove that the Iraqi leader was himself solely answerable and deserved full moral opprobrium. In fact, considerable compliance occurred, in spite of the Iraq government's obstruction and lack of full cooperation.

The US and the UK also accused the Iraqi leader of various kinds of malfeasance that deepened his people's economic and social crisis. The accusations charged that Saddam built presidential palaces, a stadium and a lavish safari park, while his people were suffering, and that he built an artificial lake during a drought.⁶⁸ Many of the charges appear to be true and reflect the Iraqi government's lax humanitarian priorities. However, these projects appear to have cost only a small portion of the country's vast needs for humanitarian supplies and capital re-building. While outrageous, they fall far short of providing by themselves an explanation for Iraq's humanitarian emergency.⁶⁹

Other charges directly address the Oil-for-Food program. In 1998 and 1999, the Western press accused the Iraqi government of not ordering adequate baby foods, of failing to order pulses – a main ingredient in Iraqis' diets — and even of exporting foods.⁷⁰ In many cases, these allegations have proved unfounded, as we shall see.⁷¹ Where true, they confirm the government's unacceptable priorities, but again do not explain more than a fraction of the humanitarian emergency.

UK Minister of Defence George Robertson accused Iraq's government of preventing medical supplies in Iraqi warehouses from reaching the population.⁷² This accusation was a serious misrepresentation, based on selective use of the UN Secretary General's report issued in February 1999, where a number of reasons for holding

⁶⁸ U.S. Department of State, "Saddam Hussein's Iraq", September 13, 1999 (updated 3/24/00) <http://usinfo.state.gov/regional/nea/iraq/iraq99.htm> .

⁶⁹ The State Department speaks of "multi-billion" dollar projects but this is not supported by reliable evidence.

⁷⁰ Patrick Clawson, "A Look at Sanctioning Iraq: The Numbers Don't Lie, Saddam Does," *The Washington Post*, February 27, 2000.

⁷¹ Associated Press, August 17, 2000.

⁷² Robertson first made the charge in a House of Commons debate on January 25, 1999 and repeated it in "Bombing Iraq, Letter," *The Times* (London), March 6, 1999.

stocks and slow delivery were clearly listed.⁷³ The same charge is repeated on the US State Department “Myths and Facts About Iraq” web site where it is said, falsely, that “Saddam has been criticised by the UN for intentionally hoarding medicines in warehouses.” In fact, the World Health Organization had urged the Iraqi government to increase its buffer stocks because of uneven and unpredictable supply chains, while computerization of records (likewise recommended by the UN) had temporarily slowed deliveries. Lack of transportation equipment, due to the sanctions, also slowed delivery of medicines at this time.

The US and the UK have also blamed Saddam Hussein not halting the sale on the black market of items such as medicine, food, and food rations that entered Iraq through the Oil-for-Food program. However, as the UN Humanitarian Coordinator Tun Myat has pointed out, desperately poor citizens sometimes sell a portion of their rations to raise cash for their household.⁷⁴ UN reports have repeatedly stated that Iraq has acceptably carried out the Oil-for-Food distribution plan (which must be previously approved by the Security Council).

The UN Office of the Iraq Programme has referred to Iraq government shortcomings in regular information provided to the Council, including Iraq’s failure to act on all approved contracts, its slow implementation of letters of credit and other financial transactions, and its other management failures.⁷⁵ The OIP has reported that the government of Iraq delayed issuance of visas to experts who were needed for electricity and other technical projects and that it has failed to cooperate fully with the UN programs. At the same time, OIP admits that serious delays are often due to UN procedures and to cumbersome arrangements mandated by the Security Council, such as UN contract checking procedures at Iraqi ports of entry that can greatly delay shipments.⁷⁶

No one can condone the Iraqi government’s failings and its lack of proper concern for the well-being of its people. To blame the government of Iraq alone for the human crisis, though, is to ignore the responsibility of the Security Council and two of its leading members.

The politics of blame, instigated by the supporters of comprehensive economic sanctions, seeks to focus public discussion on the behaviour of a vilified Saddam

⁷³ *Report of the Secretary-General Pursuant to Paragraph 6 of Security Council Resolution 1210* (1998), S/1998/187, February 22, 1999, available online at: <http://www.un.org/Depts/oip/reports/90day5.htm> .

⁷⁴ Tun Myat, “Press Briefing by UN Coordinator in Iraq,” October 19, 2000, <http://www.un.org/News/briefings/docs/2000/20001019.myatbriefing.doc.html> .

⁷⁵ Security Council Committee established by resolution 661 (1990), Statement by Benon V. Sevan, Executive Director of the Iraq Programme, At the 221st meeting of the Committee, held on Thursday, July 12, 2001, <http://www.un.org/Depts/oip/latest/BVS120701.htm> . See also his statement on the number of ‘holds’, criticising: “the very large number of applications placed on hold, in particular those concerning electricity, water and sanitation, transport and telecommunications, which impact all sectors. The same applies also for the very large number of holds placed on applications for spare parts and equipment in the oil sector which is the only source of revenues for the programme.” United Nations Office of the Iraq Programme, Oil-for-Food, Briefing by Benon V. Sevan, Executive Director of the Iraq Programme, on Thursday, April 20, 2000, <http://www.un.org/Depts/oip/latest/benonsc20apr00.htm> .

⁷⁶ Sevan raises this point in a number of his briefings.

Hussein, as the personification of evil and to absolve the Security Council (and the US-UK) from all responsibility. This line of argument reduces the Iraqi people's plight to a single cause: the machinations of a demented dictator. It is quite possible to remain a vigorous critic of Saddam Hussein and to reject this distorting project of vilification as an excuse for the sanctions. The lead reforming delegations on the Council such as Canada and Slovenia clearly had no sympathy for the Iraqi leader and loathed his human rights record. Indeed, they proposed targeting him and his circle directly in a new sanctions approach. Paradoxically, those who proposed vilification insisted on sanctions that were least damaging to Hussein and worked most clearly to his advantage!

European inter-war history shows that national humiliation and ruinous economic pressure by the victors breeds resentment on which dictatorships thrive.⁷⁷ The founders of the United Nations knew this lesson well. Some of their successors have tragically chosen to forget.

4.4 Commercial Interests and Oil Politics

Enormous commercial interests shape policies on Iraq sanctions, taking their toll in human consequences. Oil resources have greatly influenced Iraq's own domestic politics, of course. Oil revenues created a welfare state with considerable benefits prior to 1990, but they also fuelled Iraq's oppressive government, its army, its intelligence services and its weapons programs, laying some of the basis for the current conflict. Iraq manipulates its oil sales, trade contracts and future oil production agreements to gain external political backing. But the commercial dimension of Iraq sanctions do not end with Iraq's own "oil rent" dictatorship and the regime's manoeuvres for survival.

Neighboring states such as Jordan, Syria, Egypt, the United Arab Emirates and Turkey have clear interests in a lucrative export trade with Iraq, which greatly influences their policy towards this powerful neighbor.⁷⁸ They get oil-for-food contracts and they are involved in the smuggling trade as well.⁷⁹ Egypt saw its exports to Iraq soar from \$105 million in 1997 to almost \$1 billion in 2000. UAE exports to Iraq rose from \$24 million to over \$500 million in the same period. Syria and Turkey benefit from transiting Iraq's oil exports, for they are bordering states through which Iraq's oil flows, both legally and illegally. Additionally, Jordan has a special deal for Iraqi oil at reduced prices for its domestic use. France, Russia and China (permanent members of the Security Council) also have very substantial interests in commercial relations with Iraq, selling hundreds of millions of dollars in goods every year to Baghdad. Of the first \$18.29 billion of oil-for-food contracts approved by the Security Council, \$5.48 billion went to just these three countries. Further, Russia and France are owed billions of dollars by Iraq from arms sales prior to the Gulf War, loans they hope will be repaid through enlarged trade, oil deals, and

⁷⁷ John Maynard Keynes' famous book *The Economic Consequences of the Peace* (London, 1919), written immediately after participating in the conference at Versailles, provides a cautionary tale.

⁷⁸ The information in this paragraph draws heavily from Raad Alkadiri, "The Iraqi Klondike: oil and regional trade," *Middle East Report*, No. 220 (Fall, 2001), 30-33.

⁷⁹ Current estimates of smuggling range from \$1.5 to \$3 billion per year. The government of Iraq would participate in only part of the smuggling. Though far less than the Oil-for-Food program, it is a lucrative market.

growing Iraqi prosperity. Finally, Russian, Chinese and French companies are buyers of Iraq's oil. Russian traders, in particular, have won a very large share of recent Iraqi oil-sale contracts. Iraq offers these commercial deals to curry favour and support. Commercial interests incline these states to support Iraq and to favor a more lenient approach to sanctions policies, though continued sanctions may offer some of them rich rewards in smuggling and "political" contracts that they could not win on an open market.

The most important commercial interest in Iraq is not trade but oil (and gas) production. Iraq possesses the world's second largest proven oil reserves, currently estimated at 112.5 billion barrels, about 11% of the world total and its gas fields are immense as well. Many experts believe that Iraq has additional undiscovered oil reserves, which might double the total when serious prospecting resumes, putting Iraq nearly on a par with Saudi Arabia. Iraq's oil is of high quality and it is very inexpensive to produce, making it one of the world's most profitable oil sources. Oil companies hope to gain production rights over these rich fields of Iraqi oil, worth hundreds of billions of dollars. In the view of an industry source it is "a boom waiting to happen."⁸⁰ As rising world demand depletes reserves in most world regions over the next 10-15 years, Iraq's oil will gain increasing importance in global energy supplies. According to the industry expert: "There is not an oil company in the world that doesn't have its eye on Iraq."⁸¹ Geopolitical rivalry among major nations throughout the past century has often turned on control of such key oil resources.⁸²

Five companies dominate the world oil industry, two US-based, two primarily UK-based, and one primarily based in France.⁸³ US-based Exxon Mobil looms largest among the world's oil companies and by some yardsticks measures as the world's biggest company. The United States consequently ranks first in the corporate oil sector, with the UK second and France trailing as a distant third. Considering that the US and the UK act almost alone as sanctions advocates and enforcers, and that they are the headquarters of the world's four largest oil companies, we cannot ignore the possible relationship of sanctions policy with this powerful corporate interest.

US and UK companies long held a three-quarter share in Iraq's oil production, but they lost their position with the 1972 nationalization of the Iraq Petroleum Company.⁸⁴ The nationalization, following ten years of increasingly rancorous relations between the companies and the government, rocked the international oil industry, as Iraq sought to gain greater control of its oil resources. After the nationalization, Iraq turned to French companies and the Russian (Soviet) government for funds and partnerships.⁸⁵ Today, the US and UK companies are very

⁸⁰ Conversation with the authors, June 5, 2002.

⁸¹ *Ibid.*

⁸² See, for example, Daniel Yergin, *The Prize: the epic quest for oil, money and power* (New York, 1991).

⁸³ In order of size these firms are: Exxon Mobil, Royal Dutch-Shell, British Petroleum-Amoco, Chevron-Texaco, and TotalElfina. Royal Dutch Shell is often described as a British-Dutch company, while TotalElfina is sometimes described as a French-Italian company.

⁸⁴ Major shareholders in IPC were: Shell, BP, Esso (later Exxon), Mobil, and CFP, the French national company.

⁸⁵ For an account of this period, see Joe Stork, *Middle East Oil and the Energy Crisis* (New York, 1975), 188-194. Since 1918, France had considered Iraq to be its main source of international oil

keen to regain their former position, which they see as critical to their future leading role in the world oil industry. The US and the UK governments also see control over Iraqi and Gulf oil as essential to their broader military, geo-strategic and economic interests. At the same time, though, other states and oil companies hope to gain a large or even dominant position in Iraq. As de-nationalization sweeps through the oil sector, international companies see Iraq as an extremely attractive potential field of expansion. France and Russia, the longstanding insiders, pose the biggest challenge to future Anglo-American domination, but serious competitors from China, Germany and Japan also play in the Iraq sweepstakes.⁸⁶

During the 1990s, Russia's Lukoil, China National Petroleum Corporation and France's TotalElfFina held contract talks with the government of Iraq over plans to develop Iraqi fields as soon as sanctions are lifted. Lukoil reached an agreement in 1997 to develop Iraq's West Qurna field, while China National signed an agreement for the North Rumailah field in the same year (China's oil import needs from the Persian Gulf will grow from 0.5 million barrels per day in 1997 to 5.5 million barrels per day in 2020, making China one of the region's most important customers).⁸⁷ France's Total at the same time held talks for future development of the fabulous Majnun field.

US and UK companies have been very concerned that their rivals might gain a major long-term advantage in the global oil business. "Iraq possesses huge reserves of oil and gas – reserves I'd love Chevron to have access to," enthused Chevron CEO Kenneth T. Derr in a 1998 speech at the Commonwealth Club of San Francisco, in which he pronounced his strong support for sanctions.⁸⁸ Sanctions have kept the rivals at bay, a clear advantage. US-UK companies hope that the regime will eventually collapse, giving them a strong edge over their competitors with a post-Saddam government. As the embargo weakens and Saddam holds on to power, however, stakes in the rivalry rise, for US-UK companies might eventually be shouldered aside. Direct military intervention by the US-UK offers a tempting but dangerous gamble that might put Exxon, Shell, BP and Chevron in immediate control of the Iraqi oil boom, but at the risk of backlash from a regional political explosion.

In testimony to Congress in 1999, General Anthony C. Zinni, commander in chief of the US Central Command, testified that the Gulf Region, with its huge oil reserves, is a "vital interest" of "long standing" for the United States and that the US "must have free access to the region's resources."⁸⁹ "Free access," it seems, means both military and economic control of these resources. This has been a major goal of US

reserves and its main means to gain parity with the Anglo-American companies (see Yergin, *op. cit.*, 188-191).

⁸⁶ See Michael Tanzer, "Oil and Military Power in the Middle East and the Crimean Sea Region, *The Black World Today* (web site), two parts, February 28 and Mar 6, 2002.

⁸⁷ From US Department of Energy, *International Energy Outlook*, Table 13.

⁸⁸ Text as posted at www.chevrontexaco.com/news/archieve/chevron_speech/1998/98-11-05.asp At the time, Condoleeza Rice, currently US National Security Advisor, was a board member of Chevron and one of the company's supertankers was named after her. Though it is tempting to insist on the many oil and energy industry connections of the Bush administration, including the President and Vice President Cheney, oil issues have consistently had a heavy influence on US foreign policy, regardless of party or personalities.

⁸⁹ Testimony to the Senate Armed Services Committee, April 13, 1999.

strategic doctrine ever since the end of World War II. Prior to 1971, Britain (the former colonial power) policed the region and its oil riches. Since then, the United States has deployed ever-larger military forces to assure “free access” through overwhelming armed might.⁹⁰

To appraise the humanitarian and human rights impact of Iraq sanctions, we must take into account these commercial and oil interests and their substantial policy impact. Such factors do not alone determine the course of Iraq sanctions, but they appear to be an enormously powerful policy influence. Members of UN Security Council delegations are well-aware of this, and they privately refer to it often. Indeed, they cannot avoid a cynical posture towards their responsibilities under international law, as they become aware that oil politics and geo-strategic rivalry greatly overshadows humanitarian considerations that could protect and guarantee the rights of innocent Iraqis.

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⁹⁰ See Michael T. Klare, *Resource Wars: the new landscape of global conflict* (New York, 2001), esp. ch. 3, “Oil Conflict in the Persian Gulf.”

Chapter 5. Oil-for-Food

In the mid-1990s, as political support for Iraq sanctions declined, the Security Council decided to revise its earlier plan on humanitarian trade, proposing that Iraq export oil on a controlled basis and use the revenues, under UN supervision, to buy humanitarian supplies. The Council passed Resolution 986 as a “temporary” measure on April 12, 1995, with a restrictive cap on oil sales. The government of Iraq, facing an increasingly serious economic crisis, agreed to the Council’s conditions a year later. Though oil-for-food brought undoubted short term benefits to a desperate population, it never eliminated the humanitarian crisis.

5.1. A Short Term Policy

When the Security Council and the government of Iraq finally agreed in May 1996 to allow the sale of oil for the purchase of food and other necessities, no one supposed that six years later the UN would be still be operating on the same basis, running a program to provide the Iraqi population with an inadequate supply of even the most basic necessities.⁹¹

In November 2000 the UN Secretariat reported to the Security Council that

*the humanitarian programme was never intended to meet all the humanitarian needs of the Iraqi population or to be a substitute for normal economic activity. Also the programme is not geared to address the longer term deterioration of living standards or to remedy declining health standards and infrastructure.*⁹²

The Secretary-General repeated this concern in his report of March 2, 2001, reminding the Council that Oil for Food “was never meant to meet all the needs of the Iraqi people and cannot be a substitute for normal economic activity in Iraq.”

The US and the UK have consistently ignored the implications of such warnings. As year after year of this “short term” program passes, it results in further deterioration of the country’s dilapidated infrastructure, more human suffering, and deeper damage to Iraqi society. Officials in the United Nations with direct experience in administering Oil-for-Food, like Denis Halliday and Hans von Sponeck, concluded that the system was unworkable and should not continue.

5.2 Deductions and Delays

Under Resolution 986, the Council initially allowed Iraq to sell \$2.0 billion worth of oil every six months. The resolution called for deductions of 30% from all Iraqi oil sales to finance the Compensation Fund. The resolution allowed additional deductions of about 4% for UN agencies including the Office of the Iraq Programme (OIP), the arms inspection units (the UN Special Commission - UNSCOM - and the International Atomic Energy Authority – IAEA), and for fees for the use of the Turkish pipeline for Iraq’s oil exports. Of the remaining 66%, the resolution earmarked 13%

⁹¹ “Informal consultations of the Security Council held on Monday, November 26, 2001, Introductory Statement by Benon V. Sevan, Executive Director of the Office of the Iraq Programme.

⁹² UN report S/2000/1132, page 2 point 5.

for the three autonomous Kurdish northern governorates of Dahuk, Arbil and Suleymaniyah, where a UN inter-agency group would run the humanitarian program, and the remaining 53% for the balance of the country where the government would be in charge of distribution. The government of Iraq accepted the resolution in May 1996, and oil started flowing in December 1996. Because of procurement and shipping lags, the UN humanitarian supplies did not arrive in Iraq until April 1997.

This arrangement contained a strange allocation of the deductions, taking them all from the portion allocated to the Baghdad-controlled population. Thus the 13% of the population in the Kurdish areas of the North got 13% of the total oil sales, while 87% of the population in the Baghdad-controlled areas got just 53% of oil sales – 61% of the rate available in the North.⁹³

Contrary to common perception, the oil-for-food program is not “humanitarian aid.” No foreign government or NGO donates food, medicines or other necessities to Iraq under the program. The government of Iraq sells oil and then pays in hard currency (from a UN-controlled “escrow account”) for imports which the Security Council Sanctions Committee must approve. Thereafter, the UN distributes the imports in the North and UN staff oversee Iraqi government distribution in the Center and South.

From December 10, 1996 until July 19, 2002, a period of over five and a half years, the government of Iraq sold a total of \$55.4 billion in oil through UN-controlled sales. This amount looks impressive. However, far less in value of goods has arrived in Iraq. After 33% deductions for a combination of war reparations, UN operations and other items, the Council and the UN Secretariat approved \$35.8 billion in contracts.⁹⁴ As of July 19, 2002, only \$23.5 billion worth of goods had actually arrived in Iraq.⁹⁵ A combination of factors explain this \$10.2 disparity, including cumbersome procedures imposed by Security Council rules, poor or obstructionist Iraqi management, “holds” mostly imposed by the United States, and other factors.

Over a period of about five years, serving an Iraqi population of 23 million, the program has delivered roughly \$200 worth of goods per capita per year, including oil spare parts and other goods not directly consumed by the population. Allowing for domestic production outside the oil-for-food program and for smuggling, the result still appears to leave Iraqi citizens an exceedingly low per capita income which may be at or below the \$1 per day World Bank threshold of absolute poverty.

Responding to criticisms of slow delivery, the Security Council has streamlined procedures for contract approval since the early days of the program. By 2002, the UN Office of the Iraq Programme (OIP) had introduced procedural reforms including electronic submission of contract technical details, electronic signatures from border inspection personnel, several fast-track lists for items with no dual-use concern, a pre-vetting of contracts by OIP experts, and improved means for financial

⁹³ The Center-South per capita percentage rose to 69% with Resolution 1330 of December 5, 2000, which reduced the deduction for the Compensation Fund from 30% to 25%.

⁹⁴ These and subsequent data on sanctions trade are from the Office of the Iraq Programme web site (www.un.org/Depts/oip/). See “Weekly Update,” 13-19 July, 2002.

⁹⁵ OIP site.

transactions. But OIP has been under-staffed and faced with a huge and growing task of contract management and oversight.

For the country as a whole, less than two-thirds of the ordered items have arrived during the whole program. Sanctions proponents argue that this discrepancy is largely due to deliberate Iraqi obstruction. The evidence, rather, is that the contract approval system put in place by the Security Council bears a substantial responsibility for these delays and delivery blockages. In spite of improvements and reforms and in spite of the good will of many UN officials who do their best to speed the process along, oil-for-food still suffers from heavy bureaucratic centralization and red tape, as well as political manipulation, for which the Iraqi people pay a heavy price.

5.3 Blocked Contracts, Holds and “Dual-Use”

In the period before Oil-for-Food, the Iraq Sanctions Committee reviewed proposed import contracts to determine whether they should be exempted from the import ban under Resolution 687. Foods and medicines considered strictly humanitarian most readily won approval, but even in this humanitarian area the Committee blocked contracts when a single delegation objected. The United States tended to block foods that might be inputs to Iraqi food processing industries as well as a range of medicines that were alleged to have potential military use. Additionally, the United States, blocked a large number of contracts for other goods, including wrist watches, paper, textiles, shoe soles and other ordinary items that had no possible military use. The US blocked shoe soles as inputs to Iraqi industry but allowed complete shoes to be imported, it blocked textiles but allowed ready-to-wear clothes to be imported. The Committee never developed any criteria, addressing each contract on an ad hoc basis. The United States and the UK were not the only delegations to propose blockage of contracts, but they were responsible for the great majority of blockages. Their actions appeared to many observers to be arbitrary, capricious and punitive.⁹⁶

After the passage of Resolution 986, the ground rules changed, but barriers to contracts remained a major issue of contention. The United States and the UK insisted that Iraq be prevented from importing not only weapons but also items that appear to be for civilian use but which might in some way contribute to the government’s military capacity or be turned into weapons through re-manufacturing. Such items are known as “dual-use.” A Council member could place such items, or any other that they chose, on “hold” – blocking them as an agreed import. Of fifteen Council members, only two made regular use of holds: the United States and the UK. The United States imposed the overwhelming majority. As of July 19, 2002, no less than \$5.4 billion in contracts were on hold,⁹⁷ up from \$3.7 billion on May 14, 2001.

Holds have blocked vital goods. They have affected water purification systems, sewage pipes, medicines, hospital equipment, fertilizers, electricity and

⁹⁶ See Paul Conlon, *United Nations Sanctions Management: A Case Study of the Iraq Sanctions Committee, 1990-1994* Procedural Aspects of International Law Monograph Series, Vol. 24 (Ardsley, NY, 1995).

⁹⁷ See Office of the Iraq Programme, weekly update, www.un.org/Depts/oip/latest/wu020521.

communications infrastructure, oil field equipment, and much else. Sometimes just a small part of these contracts is alleged to have dual use. Other Council members do not agree that these items represent a credible dual-use threat, and they have often noted that holds are imposed inconsistently – an item may be placed on hold on one occasion and let through on another, even on contract with the same firm. Because the sanctions committee works by consensus, a single member can block any contract, even if all other members are ready to approve. As a result of these holds, contracts for many critical infrastructure projects failed to gain approval, generating much international criticism of the holds process and contributing to the broad loss of credibility of the Iraq sanctions regime.

On December 18, 2001, the OIP weekly update noted that

The total value of contracts placed on hold by the 661 Committee continued to rise . . . The “holds” covered 1,610 contracts for the purchase of various humanitarian supplies and equipment, including 1,072 contracts, worth \$3.85 billion, for humanitarian supplies and 538 contracts, worth \$527 million, for oil industry equipment. During the week, the Committee released from hold 14 contracts, worth \$19.8 million. However, it placed on hold 57 new contracts, worth \$140.6 million.⁹⁸

These numbers dwarfed the 161 contracts on the same date, worth \$253 million, that were on “inactive hold,” that is, for which the problem was the result of some administrative irregularity.⁹⁹

Many present and past members of the Council and other expert observers believe that the United States often has used the system of “holds” for political purposes and not because of real concerns over the dual-use potential in contracts. Even the UK, which has imposed a very small minority of holds, has quietly expressed concern that US holds are excessive and impossible to defend. The UK government took a diplomatic initiative in 2000 to persuade Washington to ease up on the holds and let more goods through. The United States, however, did not agree. Since the UK démarche, the value of contracts on hold has more than doubled, from \$2.25 billion in October 2000 to \$5.4 billion in mid-July 2002. As of February 2001, the most recent date for which we have a complete breakdown, the US was solely responsible for over 93% of all holds, the US and the UK together for 5%, and the UK alone for 1%, while 1% was attributable to all other Council delegations, past and present. Approximate the same breakdown has continued to July, 2002, according to knowledgeable delegates.

Though the holds add up to a very large figure, the numbers alone do not tell the full story. The United States delegation may have insisted on putting a “hold” on just one item in a large contract, with the result that the whole contract was blocked. In the worst case, one contract put on hold can endanger an entire investment project. As OIP Director Benon Sevan noted in 1999,

⁹⁸ Office of the Iraq Programme, Oil-for-Food, December 18, 2001, Weekly Update, December 8-14, 2001, <http://www.un.org/Depts/oip/background/latest/wu011218.html> .

⁹⁹ *Ibid.*

*The absence of a single spare part or item of equipment, as small as it may be, could be sufficient to prevent the completion of an entire water injection project or well completion programme.*¹⁰⁰

Sevan notes that the oil sector is the source of all the humanitarian revenue. Yet this sector was at first prevented entirely from importing equipment and spare parts¹⁰¹ and it continues to suffer severe dilapidation because of a large number of holds that result in permanent damage to oil wells, serious safety risks, dangers of environmental damage, and risk to the country's future production capacity.¹⁰² Sevan has noted that such vital items as pumping controls, exploration equipment, well-drilling, degassing, hydrostatic testing and much more have been placed on hold.¹⁰³ Such goods are vital for rehabilitation and modernization of the oil sector, a precondition for Iraq to produce more oil to pay for its immediate needs and long-term reconstruction.

Holds placed on pesticides and animal vaccines have resulted in serious loss of domestic food production. Even essential health care equipment has not escaped the dubious charge of "dual-use." There have been holds on heart-lung machines, blood gas analyzers, and other equipment. In some cases, the US has argued that it has put holds on such orders because of associated computers or data processing capacity. Sevan expressed his scepticism of this approach in comments in February 2002:

*Many of the items such as computers placed on hold are readily available in the markets and shops of Baghdad . . . what is being placed on hold is the utilization of funds from the escrow account.*¹⁰⁴

In one case, an ambulance contract suffered because it contained communication equipment. In the end, though, the vehicles got through, but only because they were delivered without radios, which had to be removed from the contracts as a condition of lifting the holds.¹⁰⁵

The UN can track the end-use of imports and determine that they were used for stated, purely civilian purposes. This is known as the "end-use/user verification" process and some 300 UN staff are currently available in Iraq for this purpose. UN officials, including the Secretary General, have regularly criticised the "holds" and argued that the UN has a much-enhanced capacity for on-site inspections and end-

¹⁰⁰ Briefing by Benon V. Sevan to the Security Council, July 22, 1999.

¹⁰¹ Oil spares gained Council approval only on June 19, 1998 with Resolution 1175 that allowed \$300 million in spares imports per six-month phase. The Council doubled this sum to \$600 million with Resolution 1293 of March 31, 2000. But US holds continued to block most important oilfield imports.

¹⁰² The UN and many independent experts have pointed out that the Iraqi oil industry is very seriously dilapidated and that production under such unfavourable condition depressurizes the reservoirs and may make future production impossible in these fields. See, for example, Middle East Institute [Washington, DC], "Iraqi Oil After Sanctions," February 29, 2000

<http://www.mideasti.org/html/020900b.html> .

¹⁰³ *Ibid.*

¹⁰⁴ Briefing by Benon V. Sevan to the Security Council, February 26, 2002.

¹⁰⁵ Secretary General's report to the Security Council, S/2001/505, para 67.

use verification.¹⁰⁶ But the United States insists that it has little faith in such options, preferring to impose holds instead. While perfect verification is probably impossible, the US approach imposes a very high cost for a very slight benefit. Its holds prevent many critical goods from reaching Iraq, blocking essential humanitarian supplies and urgently needed equipment and infrastructure. The import of modern ambulances without communications radio suggests the unacceptably compromised humanitarian system that Iraq must endure under the UN flag.

Resolution 1409 of May 14, 2002 theoretically eliminates holds, but it will probably not eliminate blocked goods. The massive Goods Review List, with suspect items totalling more than 300 pages,¹⁰⁷ provides a substantial barrier to future importation of goods into Iraq. Further, the Iraq Sanctions Committee will continue to exercise oversight and we can expect, based on past practice, that the US will find ways to block large numbers of contracts and insist that the Goods Review List be administered in a restrictive way.

Some knowledgeable observers believe that the new arrangements under Resolution 1409, including the administration of the Goods Review List, may prove equally onerous than the system that preceded it. No one expects that shipments for vital infrastructure like water, sanitation, communications, and electricity will suddenly rise to acceptable levels. Nor is it expected that the oil industry, which provides the essential funding of the humanitarian program, will be able to obtain sufficient badly needed parts and equipment, much less new investment.

Looking at the accumulated records of holds, the biggest disparity between orders and deliveries exists in the Telecommunications-Transport sector, where the US has placed so many holds that the value of contracts on hold recently exceeded the value of all contracts delivered throughout the program.¹⁰⁸ The Electricity, Oil Spares and Water-Sanitation sectors likewise suffer from large numbers of "holds" on contracts that are vital to Iraq's infrastructure. UN officials implementing the program have insisted repeatedly that such holds gravely damage the program. Sevan has spoken about holds' "direct negative effect on the program," about the "interminable quagmire," and the "appalling disrepair" of Iraqi infrastructure" but to no avail.¹⁰⁹ Resolution 1409 may at least partially relieve this nightmare, but progress initially appears very slow. In the first week of implementation, just \$7.6 million in holds were released,¹¹⁰ a rate that if sustained would require more than 13 years to work down the entire backlog.

¹⁰⁶ See several sectoral briefings of UN agencies working in Iraq to the Security Council, in the fall of 2001.

¹⁰⁷ The GRL circulated to delegations at the time of the adoption of Resolution 1409 was 302 pages in length, but the GRL that we have accessed on the OIP web site and dated May 16, 2002 is 486 pages in length. Since each page lists many categories of items, tens or even hundreds of thousands of items could be covered by the list.

¹⁰⁸ As of December 31, 2001, data from OIP.

¹⁰⁹ Statement by Benon V. Sevan, Executive Director of the Office of the Iraq Programme to the 661 Committee of the Security Council, April 20, 2000.

¹¹⁰ "Weekly Update," 20-26 July, 2002, Office of the Iraq Programme.

5.4 War Reparations Fund: Oil-for-Compensation

As we have seen, the United Nations deducts a substantial proportion of Iraq's oil sales for payment into a fund to compensate for war damages. The Council set up the Compensation Commission with Resolution 692 and in Resolution 705 it set the deductions from the Oil-for-Food account at the very high level of 30%, against the advice of the Secretary General.

The Compensation Commission has considered a very large number of claims, including claims on behalf of many individuals. According to the Commission's web site, the Commission received approximately 1,356,500 small individual claims and settled them all with payments of approximately \$16 billion. Many of the claimants had been migrant workers from Egypt and other countries, working in Iraq and Kuwait at the time the war broke out. A strong case can be made for compensating these individuals. The Commission wisely gave priority to their claims.¹¹¹

Corporations and governments have made most of the remaining claims, which come to an additional sum of about \$290 billion. This includes claims by various Kuwait government ministries and by the Kuwait Oil Company concerning wartime losses. Considering the wealth of Kuwait and the absence of humanitarian problems there, the deduction of a large share of Iraq's oil sales for war reparations to such claimants appears punitive and not attuned to Iraq's urgent humanitarian and reconstruction needs.¹¹²

These are probably the most severe war reparations since the Treaty of Versailles, at the end of World War I. Taking a lesson from the interwar crisis, the victors of World War II did not impose war reparations on Germany and Japan, in spite of terrible damage they inflicted on other countries and personal hardship imposed on millions of people.

The Council has given the Compensation Commission unusual authority and power. The Commission operates secretly and allows Iraq only to comment on a summary of each case. The operations of the Commission alone absorb more than \$50 million per year, also deducted from the Iraq's oil export funds.¹¹³

The reparations process appears even more troubling when its results are compared with the results of the humanitarian goods going to Iraq. While the compensation fund received an allocation of about 29% on average, it actually awarded a total of \$38 billion in compensation as of April 2002 compared to just \$47 billion in humanitarian supplies ordered by Iraq as of the same date, putting the compensation fund awards at 45% vs. humanitarian orders placed at 55%. As of the same date, the compensation fund had paid out \$16 billion to settle claims, while the

¹¹¹ The Commission posts extensive information about its work at www.uncc.ch.

¹¹² No current estimates for the reconstruction needs of Iraq are available. The report on the state of the oil industry calls for \$1.3 billion annual operating expenditure only, not counting capital expenditure. Other damaged sectors in Iraq are equally capital-intensive. See <http://www.un.org/Depts/oip/reports/oilexpertsreport.pdf> (p.35).

¹¹³ See Alain Gresh "L'Iraq paiera: enquête sur une commission occulte," *Le Monde Diplomatique*, October, 2000, pp. 1, 16-77.

humanitarian program had received only \$21 billion in goods, putting the compensation fund at 43%, while the actual humanitarian outlays came to just 57%.

The reparations fund appears punitive and contrary to basic humanitarian principles due to its exceptionally large claim on total resources. Many Council members have taken this view, but they have been unable to persuade the sanctions protagonists that humanitarian needs should have priority over compensation claimants, especially wealthy claimants such as the Government of Kuwait, Kuwait's state oil company, and other governments and large corporations.

Responding to growing criticism and a sharp controversy within the Council following a Compensation Commission award of \$15.9 billion to the Kuwait Petroleum Corporation, the US and the UK agreed to reduce reparations deductions from 30% to 25% in Resolution 1330 of December 5, 2000, after the small claimants had been paid. Though very welcome, especially since the funds were allocated to the Center and South, this step fell far short of humanitarian standards. The reparations deduction should instead be eliminated completely until humanitarian needs in Iraq are completely met. Further, a limit should be placed on the corporate and government compensation level, so as not to hobble the Iraqi economy for decades to come and stoke future resentment.

5.5 North vs. Center-South

Sanctions advocates make much of differences in humanitarian conditions between the three Kurdish governates in the North of Iraq, where the UN directly administers Oil-for-Food and the 15 governates in the Center and South, where the Government of Iraq administers the program. Better conditions in the North are alleged to prove that Saddam Hussein's misrule is the sole explanation of the difference. On March 24, 2000, Peter Hain, Minister of State at the Foreign Office told the UK House of Commons:

*exactly the same sanctions regime applies [in the north] . . . The difference is that Saddam's writ does not run there. Why do sanctions critics prefer to ignore that inconvenient but crucial fact.*¹¹⁴

But Hain was seriously misstating the case. Other important variables enter the equation, some an integral part of the Security Council sanctions' architecture, of which the UK was a principal author and defender.

First, as we have already seen, the system of deductions results in per capita spending in the Center-South that was only 61% of the rate in the North until December 5, 2000 (69% thereafter), a very substantial difference. Second, the sanctions allow contracts going to the North to contain a "commercial clause" that enforces the quality of goods received, whereas the Center-South cannot include such a clause and must accept shoddy and even unusable merchandise with no recourse. Third, the sanctions allow the North to derive cash from 10% of its oil

¹¹⁴ House of Commons, *Hansard*, March 24, 2000, column 1291. Hain made this false point on a number of other occasions, including a speech to the Royal Institute of International Affairs on November 7, 2000.

sales allocation, while absolutely no cash is available in the Center-South. Cash is needed to pay for services in the local economy, including staff for health clinics and food distribution programs. Fourth, while many important contracts in the South are blocked by holds, the United States puts relatively few holds on goods for the North, resulting in real infrastructure improvement in such sectors as electricity and public health. The US and the UK designed these four differences into the sanctions regime, but their propaganda pretends that the differences do not exist.

Several other regional differences explain part of the humanitarian variation. There is very active clandestine cross-border trade (smuggling) in the North, invigorating the economy there and putting money in the pockets of local people. Also, the climate in the North is more favorable, with cooler weather and more rainfall, resulting in better water supplies, more local food crops, and better overall health conditions. The North, with just 9% of the land area of the country, has nearly 50% of the productive, arable land.

The Government of Iraq is the seventh variable. Its administration is clearly less concerned with human welfare than the UN efforts in the North. It has not used imported goods as well, and it has failed to effectively implement targeted programs. But a fair appraisal of the North/Center-South differences must conclude that the Security Council bears considerable responsibility by imposing exceptionally harsh sanction conditions on the Center-South region, where 87% of the Iraqi population lives.

Conditions in the North may be better than the Center-South, but they are by no means acceptable. According to a study published in January 2002 by Save the Children, 60% of the population in the North live in deep poverty – with 40% living on incomes of under \$300 per household per year and a further 20% living on less than \$150 per household per year. The report concludes that the sanctions and ration system has “destroyed normal economic life for the vast majority,” who subsist largely through “unprecedented levels of dependency.” Up to 85% of the population are “at risk” in case of any reduction of their food access through the ration system.¹¹⁵

5.7 Nutrition and Health

Survey information by the World Food Programme/Food and Agriculture Organisation in 2000 indicated 800,000 Iraqi children “chronically malnourished.”¹¹⁶ The UNICEF 1999 study, also based on extensive field surveys, had shown 21% of children under five underweight, 20% stunted (chronic malnutrition) and 9% wasted (acute malnutrition). Several recent reports have noted that the UN has created initiatives to help the most vulnerable in the Center and South through targeted nutrition programs. These have had some positive results, but it is clear that the government of Iraq has not adequately implemented them.

¹¹⁵ Alastair Kirk and Gary Sawdon, “Understanding Kurdish Livelihoods in Northern Iraq: Final Report,” Save the Children (London, 2002). The study was based on a household economy study carried out by Save the Children during 2001.

¹¹⁶ FAO *ibid*, p. 17.

The FAO 2000 report pointed out that at 2,000 kilocalories, the universal ration provided under the UN program was insufficient in total yield, absent substantial local food additions. The same report insisted also that the composition of the food basket remained nutritionally inadequate:

*Of great concern is the lack of a number of important vitamins and minerals such as vitamin A, C, riboflavin, folate and iron in the diet. Although the planned ration is reasonably adequate in energy and total protein, it is lacking in vegetables, fruit, and animal products and is therefore deficient in micronutrients.*¹¹⁷

Despite the Oil-for-Food program and the \$11 billion worth of food that has entered the country, infant mortality remains very high. Today, most child deaths are not directly due to malnutrition, though. Rather, they are water-related, from such conditions as diarrhoea. Poor water quality and lack of sanitation, combined with existing malnourishment, have taken over from poor nutrition as the prime killer of children in Iraq. UNICEF reported in July 2001 that “Diarrhoea leading to death from dehydration and acute respiratory infections (ARI), together account for 70 per cent of child deaths.”¹¹⁸

Deliberate bombing of water treatment facilities during the Gulf War originally degraded the water quality. Since that time, sanctions-based “holds” have blocked the rebuilding of much of Iraq’s water treatment infrastructure. Additionally, sanctions have blocked the rebuilding of the electricity sector which powers pumps and other vital water treatment equipment.

Health problems in Iraq arise from multiple factors, many of which can be attributed to the sanctions. Electricity shortages, in addition to shutting down water-treatment, seriously disrupt hospital care and disrupt the storage of certain types of medicines. Sanctions also result in shortages of medical equipment and spare parts, blockages of certain important medicines, shortage of skilled medical staff, and more.

There can be no doubt, based on health and mortality surveys, that Iraqis are suffering from a major public health crisis. The sanctions both deepen that crisis as a cause and also block measures that could mitigate it through public health measures and curative medical procedures. The health status of the Iraqi people has been a key indicator of the humanitarian consequences of the Iraq sanctions regime.

5.8 Deaths

None deny that Iraq sanctions have caused many deaths, but a debate has raged over how many. The larger the number, the greater the burden on sanction advocates to justify their actions. Unfortunately, wrangling over numbers obscures the unavoidable reality: a tragically large humanitarian disaster.

¹¹⁷ FAO *ibid*, page 10.

¹¹⁸ “Urgent Need for Health and Immunisation Interventions”, UNICEF Humanitarian Action, Iraq, Donor Update, July 11, 2001, <http://www.unicef.org/emerg/Iraq11Jul01.PDF> .

The measurement of deaths rests on the concept of “excess” mortality – those deaths that exceed the mortality rate in the previous, pre-sanctions period or that exceed a projection of the earlier trend towards further gains. The previous mortality rate is well-established, but two arguments arise – first, what is the present mortality rate (which, some argue, may be distorted by false Iraq government statistics) and second, what is the cause of such mortality increase. Neither of these questions has a simple answer. Not surprisingly, the government of Iraq claims a very large increase and blames most of its child mortality on sanctions. UNICEF, in a widely-publicised study carried out jointly with the Iraq Ministry of Health, determined that 500,000 children under five years old had died in “excess” numbers in Iraq between 1991 and 1998, though UNICEF insisted that this number could not all be ascribed directly to sanctions.¹¹⁹ UNICEF used surveys of its own as part of the basic research and involved respected outside experts in designing the study and evaluating the data. UNICEF remains confident in the accuracy of its numbers and points out that they have never been subject to a scientific challenge.

Prof. Richard Garfield of Columbia University carried out a separate and well-regarded study of excess mortality in Iraq. Garfield considered the same age group and the same time period as the UNICEF study.¹²⁰ He minimized reliance on official Iraqi statistics by using many different statistical sources, including independent surveys in Iraq and inferences from comparative public health data from other countries. Garfield concluded that there had been a minimum of 100,000 excess deaths and that the more likely number was 227,000. He compared this estimate to a maximum estimate of 66,663 civilian and military deaths during the Gulf War. Garfield now thinks the most probable number of deaths of under-five children from August 1991 to June 2002 would be about 400,000.¹²¹

There are no reliable estimates of the total number of excess deaths in Iraq beyond the under-five population. Even with conservative assumptions, though, the total of all excess deaths must be far above 400,000.

All of these excess deaths should not be ascribed to sanctions. Some may be due to a variety of other causes. But all major studies make it clear that sanctions have been the primary cause, because of the sanctions’ impact on food, medical care, water, and other health-related factors. Though oil-for-food has changed the situation studied by UNICEF and Garfield, resulting in less malnutrition, recent field reports suggest that infant mortality remains high, due to water-borne disease.¹²² The mortality rate for under-five children has probably not continued to rise since the 1999 studies, but the rate apparently remains very much higher than that reported in Iraq before 1990.

¹¹⁹ UNICEF and Ministry of Health of Iraq, *Child and Maternal Mortality Survey 1999 Preliminary Report* (July, 1999) and UNICEF, *Questions and Answers* (August 16, 1999).

¹²⁰ Richard Garfield, “Morbidity and Mortality among Iraqi Children from 1990 to 1998, Assessing the Impact of Economic Sanctions.” Occasional Paper of the Joan B. Kroc Institute of International Peace Studies, University of Notre Dame (1999).

¹²¹ Communication with the authors, April 8, 2002.

¹²² FAO report, *op. cit.*

In the face of such powerful evidence, the US and UK governments have sometimes practiced bold denial. Brian Wilson, Minister of State at the UK Foreign Office told a BBC interviewer on February 26, 2001 “There is no evidence that sanctions are hurting the Iraqi people.” When denial has proved impossible, officials have occasionally fallen back on astonishingly callous affirmations. In a famous interview with Madeleine Albright, then US representative at the United Nations, Leslie Stahl of the television show *60 Minutes* said: “We have heard that half a million children have died . . . is the price worth it? Albright replied, “I think this is a very hard choice, but the price – we think the price is worth it.”¹²³

Six years after Albright’s statement and twelve years after Security Council Resolution 661, comprehensive economic sanctions continue to impose on Iraq a very high burden of deaths of young children, as measured by careful and well-regarded estimates. Combined with the deaths of older children and adults, this adds up to a great and unjustifiable humanitarian tragedy.

¹²³ CBS Television, May 12, 1996. With thanks to Eric Herring and his outstanding paper “Between Iraq and a Hard Place, *Review of International Studies* (January, 2002), vol. 28, no. 1

Chapter 6 “Smart” Sanctions, Price Disputes and Military Threats

6.1. Background

Sanctions results in the 1990s suggest that comprehensive economic sanctions are ineffective and do not reliably persuade the leadership of an offending country to make required policy changes.¹²⁴ Secretary Generals Boutros Boutros-Ghali and Kofi Annan have made this point repeatedly in public statements. The Security Council itself no longer uses such broad sanctions in other international security crises and seeks instead to develop more “targeted” sanctions.

UN officials, academic experts and national policy makers have recently held a number of conferences to consider how sanctions could be better targeted on the arms trade and on the personal finances and travel of responsible leaders and elites. The most important such efforts are known as the Interlaken Process (sponsored by the Swiss government) which began in March 1998, the Bonn-Berlin Processes (sponsored by the German government) which began in November 1999, and the Stockholm Process (sponsored by the Swedish government) which began in February, 2002.¹²⁵

The Security Council briefly imposed targeted sanctions on the Iraqi leadership through Resolution 1137 of November 12, 1997, prohibiting international travel of listed leaders until full compliance with UNSCOM inspectors had been restored. That resolution brought swift Iraqi compliance, and seemed a great success, but curiously the Council did not further use this effective and well-targeted measure.

As international and domestic opposition to Iraq sanctions mounted in the late 1990's, and as pressure rose for targeted sanctions against the Iraqi leadership, United States and UK policy makers sought means to deflect criticisms while holding the comprehensive sanctions system in place. During the US presidential election campaign in 2000, candidate George W. Bush often spoke of the need for a new approach to Iraq sanctions. Secretary of State Powell, in his congressional confirmation hearings in early 2001, repeatedly stressed the need to shore up public opinion against Iraq through what he referred to as “smart” sanctions:

So this wasn't an effort to ease the sanctions; this was an effort to rescue the sanctions policy that was collapsing. We discovered that we were in an airplane that was heading to a crash, and what we have done and what we are trying to do is to pull it out of that dive and put it on an altitude that's sustainable, bring the coalition back together.”¹²⁶

Early in 2001, after a tour of the region by Secretary Powell, the UK government (with US support) proposed to modify Iraq sanctions. The UK did not propose

¹²⁴ Robert A. Pape, “Why Economic Sanctions Do Not Work,” *International Security*, Vol. 22, No. 2 (Fall, 1997).

¹²⁵ The Interlaken Process focused on financial sanctions while the Bonn-Berlin Process focused on arms embargoes, while the Stockholm Process seeks an integrative approach.

¹²⁶ US Senate Foreign Relations Committee, Hearing, “The Fiscal Year 2002 Foreign Operations Budget,” March 8, 2001.

targeting the Iraqi leadership, however, ignoring several years of discussions about more effective sanctions. Rather, the UK proposed a further streamlining of imports, combined with more rigorous controls at Iraq's borders to prevent smuggling. Eventually, after much discussion, this proposal bogged down in the summer of 2001 in the face of doubts by many Council members and a threatened Russian veto.

The events of September 11, 2001 changed the political equation on the Council and created greater unity among the permanent members through shared concern about terrorism and related issues. As a result, opposition by Russia, China and France to Iraq sanctions softened, opening the way for a modified version of the original UK resolution centering on a Goods Review List (GRL) to streamline imports. Resolution 1382 (November 2001) provided for a GRL to be adopted by the Council by May 29, 2002. The GRL theoretically offered a means to speed contract approval by compiling in advance a list of potentially dual-use items, with all remaining items exempted from automatic Sanctions Committee review. Committee members would retain the option, though, to block future contracts.

The United States and Russia negotiated the GRL list over the course of several months, with the Russians favoring a short list and the US favoring a long one. The United States lifted holds on \$200 million in Russian contracts and it promised to lift holds on \$550 more as a means to secure Russian agreement.¹²⁷ France and China allegedly asked for holds on their contracts to be lifted also, as a condition of their agreement.¹²⁸ Since the policies of the US and the UK are widely believed to be driven by commercial interests in the oil sector, this bargaining fed the perception that the Security Council sanctions are dominated by commercial dealing among the permanent members, not by concerns about "peace and security" or arms control.¹²⁹ The elected members of the Council were kept, as usual, entirely in the dark until the resolution was finally submitted to the Council on a take-it-or-leave-it basis.

6.2. Smart Sanctions vs. Targeted Sanctions

Reconstruction and economic revival, not the relief-based approach of the Oil-for-Food program and its "smart" variant, are essential to human development and the humanitarian rights of Iraq's people.

US-inspired smart sanctions, mainly in the form of a Goods Review List, completely fail to address the major problems of the current sanctions against Iraq. Four pillars of the present sanctions effectively prevent the rebuilding of Iraq's economy:

- Targeting the entire population, not just leaders
- Controlling Iraq's oil export income through a cumbersome UN-administered "escrow account"

¹²⁷ See "Cosmetic Surgery," *The Economist*, May 16, 2002; "US unfreezes Russian contracts in oil for food program with Iraq," *Alexander's Gas & Oil Connections*, News & Trends: Middle East, April 4, 2002.

¹²⁸ According to the *Washington Post* (July 6, 2001), the US had lifted blocks on \$80 million of Chinese contracts in June 2001, at an earlier stage of the negotiations.

¹²⁹ The GRL negotiations took place only between the US and Russia, with even the UK reportedly excluded. The United States apparently rejected a special deal of lifted holds for France and China.

- Controlling Iraqi imports in ways that limit access to key goods, especially items for Iraq's infrastructure and for its oil sector, and that drastically slow the delivery of most contracts
- Prohibiting foreign investment and freezing all foreign assets

The four pillars have remained the basic operating method of the (new) sanctions. No government could restore a healthy domestic economy within the confines of such sanctions. As the Security Council itself concluded in 1999, Oil-for-Food cannot provide a framework for rebuilding Iraq and restoring its vital infrastructure.¹³⁰

The "smart" sanctions initially envisaged by the Security Council in Resolution 1382 and finally adopted in Resolution 1409 are not smart. They do not follow the recommendations of the Interlaken or Bonn-Berlin process.¹³¹ They do not reflect a focus on the culprit regime or a better targeting of military equipment. While theoretically speeding up delivery of certain goods, these proposals also allow the blocking of vital imports. Iraq needs foreign investment projects and contact with the outside world to train a new generation of Iraqi managers, scientists and technicians. An open Iraq would almost certainly lead to positive political changes. Instead, "smart" sanctions shore up the old, failed system.

Judging by the experience of "fast-track" lists drawn up in 2000, the new "smart" sanctions could increase the volume of humanitarian goods arriving in Iraq, but this is by no means sure. Some well-informed observers think that the new system will be no better than the old and possibly worse, depending on how UNMOVIC, AIEA and OIP are able to handle the new process of contract compliance scrutiny. Even if the new arrangements result in some marginal improvement, they offer far too little to address the pressing humanitarian crisis. So much effort for such small gain suggests that the US and the UK are more interested in "public relations" (*New York Times*) or "cosmetic surgery" (*The Economist*) than in speeding up goods shipments to Iraq.¹³²

6.3 Oil Pricing Disputes & Shrinking Humanitarian Revenue

A new crisis quickly overshadowed Resolution 1409. A clash over oil pricing methods resulted in rapidly falling Iraq oil sales and a severe shortfall of funds for the humanitarian program.

The crisis had its origins in late 2000 when oil traders buying Iraqi oil started to sell the oil at marked-up prices and kicked-back to Baghdad a portion of the premium they received. This scheme gave the Government of Iraq the cash it eagerly sought. Russian traders acted as the major intermediaries and profited handsomely. The kickback varied, but in early 2002 stood at 25-30 cents per barrel, or over 1% of the

¹³⁰ Security Council Humanitarian Panel Report, March 1999
<http://www.un.org/Depts/oip/panelrep.html> .

¹³¹ These proposals set out model Security Council resolutions, recommend a UN sanctions unit, etc. The entire exercise has aimed at targeting leaders, their personal finances, travel and arms supplies. The reports are posted on the web.

¹³² *New York Times*, May 15, 2002. *The Economist*, "Cosmetic Surgery" May 16, 2002.

oil price, with price premiums running at 30-45 cents.¹³³ Had it continued, this scheme might theoretically have provided the government of Iraq with about \$100 million in cash revenue annually, based on recent prices and export levels. Such a sum is relatively small in comparison to Iraq's estimated smuggling revenues of at least \$1.5 billion.

The US and UK demanded that the Security Council take steps to prevent these kickbacks. Some delegations objected, but ultimately the US-UK prevailed. In October 2001, the Iraq Sanctions Committee introduced a new system known as "retroactive pricing," which reduced premiums to 10-15 cents per barrel by July 2002 and nearly eliminated all kick-backs. But the Council's new pricing system left oil buyers uncertain of final prices at the time of purchase. Increased uncertainty for buyers and reduced profit margins for oil traders reduced demand for Iraqi oil by a third or more.¹³⁴

The shrinking market took a heavy toll on the humanitarian program. In mid-February OIP Executive Director Benon Sevan spoke to the Council of the program's "financial crisis."¹³⁵ Iraq's refusal to sell oil for a month (April 8-May 8, 2002), announced as a show of support for Palestinians, further worsened the situation, as did weakening oil prices. As the demand crisis wore on, the pricing method had an increasingly negative effect on the humanitarian program. By July 26, a funds shortfall left the UN unable to act on 1,001 approved contracts worth \$2.1 billion.¹³⁶

Many in the Council came to believe that the US-UK pricing system was punitive and unacceptable.¹³⁷ The French circulated proposals in June to escape the impasse and restore acceptable prices, an initiative that attracted broad support. But the US-UK refused, insisting that the Council must dutifully block cash to the Iraqi government and blaming Iraq entirely for negative humanitarian consequences. Though many in the Council pressed for a speedy resolution, negotiations dragged on, while revenue shortfalls grew. Once again, the people of Iraq were forced to pay a heavy price.

6.4 Regime Change, Military Threats and Appraisals of Iraq's Rearmament

The United States government has consistently pursued a policy favoring a change of regime in Iraq. This policy has included clandestine support for Iraqi opposition groups and efforts to promote a military coup against Saddam Hussein. On October

¹³³ UN Oil Overseers Report, March 14, 2002 notes the premium level. Estimates of the kickback have appeared in the *Financial Times* (June 7), *Middle East Economic Survey* (July 1 and 8), and *Reuters* (July 16).

¹³⁴ UN Oil Overseers Report, March 14, 2002. For some comment on the pricing issue see David Cortright, Alistair Millar and George A. Lopez, *Sanctions, Inspections and Containment* (Goshen, Indiana, 2002)

¹³⁵ Statement by Benon V. Sevan, Executive Director of the Iraq Programme at the Informal Consultations of the Security Council, February 26, 2002 (as posted on the OIP web site).

¹³⁶ "Weekly Update," 20-26 July, 2002, Office of the Iraq Programme web site.

¹³⁷ Not surprisingly, the Russians took the most vocal position. See, for instance, "In Connection with problems in implementing UN humanitarian program for Iraq," Press release of the Government of the Russian Federation, June 17, 2002. Many other, more disinterested delegations, opposed firmly but quietly the US-UK stance.

31, 1998, shortly before Operation Desert Fox, President Bill Clinton signed the Iraq Liberation Act, which clearly identified regime-change as US policy and authorized spending and policy action in this direction.¹³⁸

Since the fall of 2001, Washington has increased its commitment to regime-change. In President Bush's State of the Union address in January 2002, he branded Iraq as a "terrorist state," part of an "axis of evil"¹³⁹ and many reports have since circulated about plans for a military strike against Iraq. This dogmatic "good vs. evil" approach, endangers peace and ignores humanitarian considerations as well as opportunities for peaceful solutions. It does, however, provide a rationale for US military and political control of Iraq's oil fields.

The US now alleges that Iraq possesses (or that it will soon acquire) weapons of mass destruction. This concern cannot be categorically rejected as implausible, in view of such weapons programs by Iraq in the recent past. But considerable doubt exists, among well-informed experts, like former weapons inspector Scott Ritter.¹⁴⁰ CIA reports recently concluded that there is no hard evidence for such claims.¹⁴¹ And Senator Bob Graham, Chairman of the Intelligence Committee of the US Senate was reported on May 14, 2002 by *USA Today* to have said that "Based on the intelligence briefings he has received . . . Iraqi president Saddam Hussein is not on the verge of developing weapons of mass destruction."¹⁴²

It should be recalled that other countries have actually developed and deployed weapons of mass destruction without US-led military threats. Israel, South Africa under apartheid, India and Pakistan are cases in point. Such programs are extremely dangerous to world peace wherever they emerge, but Washington has applied drastically different standards in appraising them and claimed "global responsibilities" to act (or not) against each as it sees fit. Regional and international disarmament agreements would be far better guarantee of peace than unilateral decisions of a single superpower.

In the present political climate, the "hawks" in Washington are ready to disregard the weak evidence concerning Iraqi rearmament. Instead, they insist that Iraq poses such a grave and immediate danger that humanitarian considerations do not count

¹³⁸ The *New York Times* quoted a US National Security spokesman as dating the regime-change policy to the mid-1990s: "Our policy remains the same. It has been the same since 1995 and that is 'regime change'." (August 3, 2002). But evidence suggests that regime-change has been official policy since 1991.

¹³⁹ State of the Union Address, January 29, 2002.

¹⁴⁰ Scott Ritter, a member of the UN disarmament team in Iraq, has argued that while every single item was not accounted for by the UNSCOM monitors, Iraq was found to be "qualitatively" disarmed, that is, "the elimination of a meaningful, viable capability to produce or employ" nuclear or chemical-biological weapons. See "Redefining Iraq's Obligation: The Case for Qualitative Disarmament of Iraq," *Arms Control Today* (June, 2000).

¹⁴¹ Unclassified Report to Congress on the Acquisition of Technology Relating to Weapons of Mass Destruction and Advanced Conventional Munitions, January 1 through June 30 2001.

¹⁴² On July 5, the *New York Times* reported that European governments believe that the evidence for Iraq's possession of mass destruction weapons remains "murky" (European intelligence sources have in fact been saying that no clear evidence for such programs currently exists.) A month later the *Times* concluded from Congressional hearings that "the United States simply does not know" how advanced Iraq's weapons programs may be." (August 3, 2002).

and that a military strike is urgently necessary.¹⁴³ In such a heated atmosphere, the opportunity for lifting Security Council sanctions against Iraq may have temporarily diminished. Many Council delegations, though critical of the sanctions, are concerned primarily about averting a full-scale invasion of Iraq by the United States.

Such a dismal prospect need not prevail for long, however. The United States may draw back from the dangerous war option and members of the Security Council may again raise their voices for sound policy and for conformity with international law. The temporary unity of the Permanent Members is likely to weaken, making room for elected members of the Council to advance such proposals successfully, with broad backing from the international community. Public opinion, acting directly and through governments, is likely to pressure the Council in a more critical direction. A new dynamic can promote the values that gained ground in the late 1990s, a dynamic of far-reaching reform inspired by humanitarian concerns and legal mandates, not cynical commercial interests or expansionist geopolitical strategies.

¹⁴³ Recent attacks on the arms control record of UNMOVIC head Hans Blix (as first reported in the *Washington Post*) suggests that Paul Wolfowitz and others in the Bush administration fear UN inspections that would determine Iraq to be free of weapons of mass destruction.

Chapter 7 – The Council’s Obligations under Human Rights and Humanitarian Law

7.1. Legal Framework for the Security Council

The UN Charter gives the Security Council broad authority to maintain international peace and security, including the use of sanctions and international military action. The Charter also obliges member states to abide by Security Council resolutions even when such resolutions conflict with other treaties.

However, Article 24 of the Charter directs the Council “to act in accordance with the Purposes and Principles of the United Nations” when acting to maintain peace and security. The promotion of human rights is one of these fundamental “Purposes and Principles.”¹⁴⁴ Human rights have been elaborated in the Universal Declaration, the two International Covenants, and a variety of other international instruments including the Convention on the Rights of the Child, creating a legal framework for member states of the UN. While the Security Council may not be bound by human rights requirements in the same manner as a state, it must nevertheless act in conformity with these principles in fulfilling its duties under the Charter. The contrary view, that the Council is *not* bound by international law, defies not only the Charter but also common sense.

When responding to a threat to peace and security, it may not be clear whether the Security Council should abide by the war-time legal regime of humanitarian law or the peace-time regime of human rights. While both are grounded in humanitarian norms, they offer different levels of protection to the individual. Humanitarian law, the laws of war, permit belligerents to inflict collateral civilian casualties when attacking legitimate military targets, provided that the harm to civilians is not disproportionate to the value of the military target, that it was unavoidable and that all efforts have been made to minimise it. The human rights regime, on the other hand, provides stricter protection to civilian life, health and property. The Council is therefore under an obligation to respect both humanitarian law and human rights norms and to apply them in the framework of its actions on sanctions. But, some members believe that the Council enjoys a specially privileged position and is subject to no legal authority other than its own political judgements.¹⁴⁵

The Security Council’s failure to address the human rights and humanitarian impact of sanctions has prompted regular expressions of concern from UN agencies, commissions, panels and other bodies – the Machel Report to the General Assembly (1996), the Comment by the Committee on Social, Economic and Cultural Rights (1997), the Statement by the Inter-Agency Standing Committee (1997), UNICEF’s

¹⁴⁴ ‘The Purposes of the United Nations are (...) to achieve international cooperation in (...) promoting and encouraging respect for human rights (...)’ (article 1(3)). ‘The United Nations shall promote universal respect for, and observance of, human rights and fundamental freedoms for all ...’ (Article 55(c)).

¹⁴⁵ See Mohammed Bedjaoui, *The New World Order and the Security Council* (Dordrecht, 1994) for an extensive review of the arguments from a legal scholar who believes that the Council is not above the law and even that its decisions should be reviewable by the World Court. A well-known World Court opinion by Justice Lauterpacht (1993 L.C.J. 325, p. 440) argues that the Council’s work is obviously subject to the limits imposed by international humanitarian law.

Hoskins Report (1998), the Bossuyt Report of the Commission on Human Rights (2000) (tellingly entitled *The Adverse Consequences of Economic Sanctions on the Enjoyment of Human Rights*),¹⁴⁶ the Report of the UN High Commissioner for Human Rights entitled *The Human Rights Impact of Economic Sanctions on Iraq*,¹⁴⁷ as well as reports of the International Committee for the Red Cross and many more. Human rights NGOs including Human Rights Watch and the Center for Economic and Social Rights have likewise raised serious questions about Iraq sanctions. A variety of international conferences have also raised these concerns, including Interlaken, Bonn-Berlin, Stockholm, the Symposia of the International Peace Academy, and the Colloquium on “United Nations Sanctions and International Law” of the Graduate Institute of International Affairs (1999).¹⁴⁸ There has not yet been a direct legal challenge to the Council on this issue, but there could and should be, possibly through the International Court of Justice.

7.2 Human Rights Law

The Security Council is bound to respect the full range of human rights standards in the major international legal instruments as an extension of its underlying obligations under the UN Charter.¹⁴⁹ It must ensure that its actions comply with these standards. Thus, the Security Council may not violate human rights, even when acting to maintain peace and security. The Council has two basic human rights duties:

procedural duties to recognize its human rights obligations and take concrete measures to monitor its actions to comply with these obligations; and

substantive duties not to undertake any actions that violate human rights, especially the rights of vulnerable groups with special legal protections, and to undertake immediate corrective measures in the case of violations.

The two sets of duties are closely linked. Procedural duties provide an essential safeguard against human rights violations by allowing the Security Council to monitor its activities for early warning signs of adverse human rights impacts. Since no outside body has yet successfully reviewed the legality of Security Council decisions, the Council must judge its own actions and hold itself accountable to human rights standards. Given its recently-expanded role in international affairs, the Security Council has an increased obligation to monitor and check its own actions.

¹⁴⁶ IASC Statement S/1998/147; Eric Hoskins, *The Impact of Sanctions: a study of UNICEF's perspective* (New York, 1998); Bossuyt Report: *The Adverse Consequences of Economic Sanctions on the Enjoyment of Human Rights*, E/CN.4/Sub.2/2000/33.

¹⁴⁷ Background Paper prepared by the Office of the High Commissioner for Human Rights for the meeting of the Executive Committee on Humanitarian Affairs, September 5, 2000.

¹⁴⁸ For the GIIS event, see Vera Gowlland-Debbas, *United Nations Sanctions and International Law* (The Hague, 2001).

¹⁴⁹ Every major human rights treaty derives from and grounds itself in the principles of the United Nations, as made explicit in its Preamble or Statement of Principles.

Procedural Human Rights Violations

The Security Council has clearly violated its procedural human rights obligations throughout the course of its sanctions against Iraq. Given the extent of civilian suffering and the clear knowledge available, the Council has taken only token steps to measure the human rights impact of its sanctions or to modify its actions in accordance with human rights principles. At the very beginning of the sanctions, UN Secretary-General Javier Perez de Cuellar called for “close monitoring” as an essential tool for avoiding a humanitarian crisis:

*The maintenance of food supply and consumption as well as the close monitoring of the nutritional and health status of the Iraqi population over the next few months are absolutely necessary to prevent full-scale famine and major human disasters developing in the country.*¹⁵⁰

Apart from the 1999 panels, however, the Council has never authorized an ongoing assessment of the sanctions’ humanitarian impact, due to vigorous opposition by the United States and the UK. Given the importance of the sanctions, such an assessment should be functioning on a permanent basis and offering regular reports to the Council. But the pro-sanction members vigorously resist such a step. As Hans von Sponeck said,

*every attempt that I made with the United Nations in New York to get an agreement to prepare an assessment of the humanitarian condition in Iraq was blocked.*¹⁵¹

In Resolution 1302 of June 8, 2000, the Council spoke of a “comprehensive report” to be prepared by a group of experts, but the US-UK insisted on language that other Council members understood as effectively ruling out Iraqi cooperation,¹⁵² demanding that the mandate of the study exclude any mention of human rights or of the impact of sanctions. The US also rejected a proposal by other Council members that a report should be prepared based on information available outside Iraq.

The Council has ordered impact assessment studies of sanctions in the case of Liberia and Afghanistan.¹⁵³ The absence of such assessment in the case of Iraq appears as a gross procedural lapse with extremely serious consequences.

Substantive Human Rights Violations

The Council has a clear share of responsibility for the death and suffering of hundreds of thousands of Iraqi civilians under sanctions. These deaths carry the clearest implication of a substantive violation, since the UN Human Rights Committee considers the right to life to be “the supreme right from which no derogation is permitted even in time of public emergency.”¹⁵⁴ Sanctions have also

¹⁵⁰ Report of the Secretary General, September 4, 1991, S/23006, 15.

¹⁵¹ Open letter to Mr. Peter Hain, published in the *Guardian*, January 3, 2001.

¹⁵² See paragraph 18 of Resolution 1302 (8 June 2000).

¹⁵³ For Liberia: UN Document S/2001/939. For Afghanistan: UN Document S/2001/1215.

contributed to violations of the rights to health, education, and an adequate standard of living. The Council clearly cannot act in pursuit of international peace and security without causing some degree of inadvertent harm, but very large casualties, caused in such a routine way, cannot be accepted. The Council would thus appear to be in violation of rights guaranteed by the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and other solemn international agreements.

Iraqi children have suffered disproportionately under sanctions. Human rights law considers children uniquely vulnerable to abuse and therefore grants them special protections in the Convention on the Rights of the Child. Among other provisions, the Convention specifically recognises that “every child has the inherent right to life” and calls on all states “to ensure to the maximum extent possible the survival and development of the child” and “to take appropriate measures to diminish infant and child mortality.”¹⁵⁵ It is hard to think of a graver breach of child rights in modern history than the death of hundreds of thousands of Iraqi children.

The Iraq government’s own human rights violations in no way excuse the Security Council for its violations. The Council remains always obligated by the UN Charter to “promote and encourage respect for human rights.” The human rights of individual Iraqis are not forfeited because of their government’s misconduct, particularly when these citizens have no voice in the decisions of the government. Iraq’s failure to comply completely with Security Council resolutions therefore does not give the Council license to disavow its independent obligations to respect the human rights of Iraqi civilians.

7.3 Humanitarian law

Even under the more permissive framework of humanitarian law, Security Council sanctions on Iraq violate well-established legal norms. The basic principles of the laws of war are those of distinction and proportionality. Under the principle of distinction, belligerents are required to distinguish between civilians and combatants at all times and to direct attacks only against military targets.¹⁵⁶ This is the fundamental principle of the laws of war. The corollary principle of proportionality is designed to ensure that attacks against military targets do not cause excessive civilian damage. The Geneva Conventions define the principle of proportionality as prohibiting any “attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects (...) which would be excessive in relation to the concrete and direct military advantage anticipated.”¹⁵⁷ Sanctions are tantamount to acts of war and so should be subject to this restriction.

¹⁵⁴ UN Human Rights Committee, General Comment 6/16 (July 27, 1982).

¹⁵⁵ Articles 6 and 24, ‘States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health (...)’ and they ‘shall pursue full implementation of this right and, in particular, shall take appropriate measures (...) to diminish infant and child mortality’ (Ibid.)

¹⁵⁶ Additional Protocol to the Geneva Convention of August 12, 1949, Relating to the Protection of Victims of International Armed Conflicts (Protocol 1) of June 8, 1977, article 51 (5) (b).

¹⁵⁷ Article 51 (5)(b), Protocol 1, Additional to the Geneva Convention, June 8, 1977.

Indiscriminate weapons, which cannot be directed solely against military targets, by their very nature violate the principle of distinction. Comprehensive economic sanctions can also be considered as such an indiscriminate weapon, which two Secretary Generals have for good reason called a “blunt instrument.”¹⁵⁸ Such sanctions fail to target the real offenders and instead harm the weakest and most vulnerable members of society. Sanctions in Iraq thus clearly violate the principle of distinction under humanitarian law.

Sanctions also violate the principle of proportionality.¹⁵⁹ The Security Council originally re-imposed economic sanctions after the Gulf War with high expectations of successfully eliminating mass destruction weapons in Iraq. Initially the sanctions were proportional to the aim. But after substantial disarmament was achieved and the humanitarian crisis deepened, the judgement on proportionality must be revised. Many innocent lives continue to be claimed by the sanctions with scarcely any potential benefit.

Proportionality is a malleable and subjective standard, prone to manipulation by belligerents to justify civilian casualties. Nevertheless, the authoritative ICRC legal commentary on the laws of war sets out guidelines for interpretation:

A remote [military] advantage to be gained at some unknown time in the future would not be a proper consideration to weigh against civilian loss. (...) The advantage concerned should be substantial and relatively close. (...) There can be no question of creating conditions conducive to surrender by means of attacks which incidentally harm the civilian population.”¹⁶⁰

The Iraq case illustrates why, contrary to conventional wisdom, comprehensive economic sanctions are not a humane alternative to war. Public opinion could never have tolerated a military campaign against Iraq that killed so many innocent children, especially not a war carried out in the name of the world’s people under the authority of an organization dedicated to defend human rights.

The case of Iraq underscores the need to clearly define legal constraints on the Security Council. The Council’s significant power to act in international affairs must be bounded by accepted principles of international law. For 12 years, the Security Council has maintained comprehensive sanctions without referring to its *legal* obligation to act in accordance with human rights and humanitarian principles.

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¹⁵⁸ See e.g. Boutros Boutros-Ghali in *Supplement To An Agenda For Peace: ibid*, para 70.

¹⁵⁹ For a much more extensive argument, see Thérèse O’Donnell, *Iraq and the Proportionality of UN Sanctions After Ten Years* A report compiled for Save the Children (London, 2000).

¹⁶⁰ *Ibid*.

Chapter 8 - Conclusion

The international community must press the Security Council to honor its legal obligations in Iraq sanctions policy. World public opinion now recognizes comprehensive economic sanctions as a seriously flawed policy tool, a “blunt instrument” almost certain to do massive harm to innocent civilians. The Council itself no longer uses such sanctions, choosing to use exclusively targeted sanctions instead. But two Permanent Members have prevented the Council from reforming Iraq sanctions so as to meet the widely-agreed new standards.

When the Council first imposed sanctions on Iraq, its members may have reasonably believed that the sanctions would be effective and that the goal of disarmament was worth a few months of civilian suffering. Now, twelve years later, with clear evidence of negative consequences and with no further positive outcome to be expected, the Council can no longer excuse its inaction. The Council’s failure to lift the comprehensive economic sanctions is a breach of its humanitarian responsibilities and an abject failure to use the principles of proportionality.

In recent years, Council members have received many learned and thoughtful reports, setting forth the humanitarian crisis in Iraq, the flaws in the sanctions regime, and the international legal principles that should be applied. The Council cannot say that it is uninformed about the conditions on the ground or that it is unaware of the legal aspects of its responsibilities. Oil-for-Food sought to accommodate the strongest objections, by allowing Iraq to sell oil for the purchase of some humanitarian resources. But it was designed as a short term policy, and is subject to bureaucratic bottlenecks, manipulated by the pro-sanction powers, and throttled by US-imposed blocking and holds. The Goods Review List and associated new procedures under Resolution 1409 are far from sufficient as an improvement.

A number of UN agencies and organs have called on the Security Council to lift or deeply modify the sanctions. Several Secretary Generals have raised questions that pointed in this direction. Two respected UN humanitarian coordinators have resigned in protest, urging an end to the punitive sanctions. Scholars, journalists, religious leaders, NGOs, diplomats, health authorities, human rights organizations, parliamentarians and citizens have joined in a compelling call for change. A majority of Council members have long concluded that Iraq sanctions are a repugnant failure and world opinion has clearly mapped out the road towards legality and accountability:

- Comprehensive economic sanctions must be lifted,
- The UN “escrow account” must be eliminated,
- Free trade (excepting military goods) must be re-established,
- Foreign investments in Iraq must be permitted, and
- Foreign assets of Iraq must be unfrozen so as to normalize its external economic relations

Clearly, though, such change will not be free of risk. The government of Iraq cannot be counted on to make benign and peaceful policy choices, or to automatically promote the well-being of its people. In this context

- Robust weapons monitoring must be reintroduced, to insure full disarmament and to guarantee no future production programs for mass destruction weapons, and
- Disarmament in Iraq must be complemented by regional approaches to disarmament, especially elimination of mass destruction weapons and weapons programs in other regional states.

The Government of Iraq must give firm assurances to the international community, as a part of reciprocal undertakings, that

- It will renounce all plans to buy, build or use weapons of mass destruction and related delivery systems
- It will cooperate fully with ongoing UN arms inspection arrangements
- It will establish friendly and cooperative relations with neighboring countries
- It will take all necessary steps to address the humanitarian emergency as soon as funds become available to do so
- It will honor minority rights, including offering special status to the Kurdish areas, and it will take steps to honor its human rights obligations

If the government of Iraq fails to provide adequate means for inspection and arms control, in future, then:

- Narrowly-targeted sanctions, including financial and travel penalties, should be directed at Iraq's leaders,
- Time limits must be part of the new sanctions regime,
- Clear criteria for lifting must also be part of the new sanctions regime,
- Regular humanitarian assessments must also be part of the new sanctions as well, so that the Council will be aware of their possible impact on the broader Iraqi population.

If Iraq is to return to normalcy, and if it is to be persuaded to agree to international accords, it must be free of constant military pressure, threats and intimidation. The Security Council's decisions, not unilateral action by one or two powerful states, must prevail. In this framework:

- "No-Fly zones" and constant aerial threats and attacks must be eliminated, and
- Unilateral military attacks, as a means towards "regime change," must be ruled out as unacceptable and illegal.

Security Council members must find the courage and the wisdom to move forward, to reflect at long last the Council's compelling responsibilities and its accountability to the overwhelming majority of world opinion. For this reason, the Security Council should seek a wide-ranging agreement with the government of Iraq that ends comprehensive sanctions and threats of violence on the one hand while introducing on the other hand a program for securing Iraq's physical and political renewal and its peaceful re-integration into the world community. In such a framework:

- Emergency relief, to bring a speedy end to the human suffering, must be put in place, with the help of the international community,
- Large-scale physical reconstruction, to build a new infrastructure for Iraq, must be set in motion, including foreign investments, and

- Safeguards for minorities such as the Kurds must be introduced, including federative structures and possibly a UN presence to monitor and promote human rights in the post-sanctions era.

The Council has recently made great and impressive progress in East Timor, Sierra Leone, Ethiopia-Eritrea and Angola, each a very difficult and challenging task. A peaceful and constructive solution to the Iraq crisis is surely not beyond its grasp.

Appendix I

Chronology of main events

1990

- Aug 2 After months of tension, the Iraqi army invades Kuwait. The United Nations Security Council passes Resolution 660 condemning the Invasion and demanding Iraq's immediate and unconditional withdrawal.
- Aug 3 Arab League calls for Iraq's withdrawal from Kuwait.
- Aug 6 Council passes Resolution 661, imposing comprehensive sanctions on Iraq and establishes a committee (the 661 or Sanctions Committee) to monitor the sanctions.
- Aug 12-15 Iraq offers two peace plans which are rejected by the US.
- Aug 28 Jordan proposes a peace plan which is accepted by Iraq but rejected by the US.
- Sep 19 Morocco proposes a peace plan which is rejected by the US.
- Sep 24 France proposes a peace plan which is accepted by Iraq but rejected by the US.
- Nov 22 Most expert witnesses to US Senate Armed Services Committee reject military option towards Iraq.
- Nov 29 Security Council Resolution 678 authorizes use of force against Iraq if it has not withdrawn from Kuwait by 15 January 1991.
- Nov 30 US proposes talks; Iraq accepts.
- Dec 5 CIA director, William Webster tells US Congress that "economic sanctions and the embargo against Iraq ... have dealt a serious blow to the Iraq economy. ... In late November, Baghdad cut civilian rations for the second time since the rationing program began ... In addition, services ranging from medical care to sanitation have been curtailed." Although sanctions are hurting Iraq's civilian economy, they are affecting the Iraqi military only at the margins.

1991

- Jan 9 US-Iraq talks fail.
- Jan 13 UN Secretary-General's talks with Iraq fail.
- Jan 15 Air war begins, destroying much of Iraq's civilian infrastructure.
- Jan 21 Iran protests scale of bombing.
- Jan 29 French defence minister Chevènement resigns in protest against scale of bombing.
- Feb 3 Pope John Paul II rejects the claim that the war against Iraq is a "just War."
- Mar 20 Ahtisaari Report to Security Council on humanitarian crisis in Iraq and Kuwait. "...Most means of modern life support have been destroyed or rendered tenuous." "Sanctions in respect of food supplies should immediately be removed." No remedy to humanitarian need, "without dealing with the underlying need for energy."
- Apr 3 Resolution 687 begins cease-fire, establishes UN Special Commission

on weapons, extends sanctions by tying them to Iraq's weapons. UK ambassador Sir David Hannay states in the Council that "it will in fact prove impossible for Iraq to rejoin the community of civilized nations while Saddam Hussein remains in power."

- Apr 5. Resolution 688 condemns "the repression of the Iraqi civilian population" in the ensuing civil war.
- Mid-Apr US, UK and France organize a "no-fly" zone in northern Iraq, while Operation Provide Comfort carves out an autonomous zone in a large part of the Kurdish areas.
- Jul 17 UN mission to Iraq led by Sadruddin Aga Khan concludes that Iraq needs \$22 billion that year to provide civilian services at pre-war levels.
- Aug 15 Resolution 706 acknowledges the Sadruddin Aga Khan Report and calls for oil sales not to exceed \$1.6 billion over 6 months to be placed in escrow account, deducting 30% for a Compensation Commission, plus UNSCOM and other international obligations, leaving less than 1/3 of the Report's recommended amount for humanitarian aid.
- Sep 19 Resolution 712 proposes that Iraq be allowed \$1.6 billion oil sales over six months, of which \$900 million would be available for civilian needs, disregarding the Secretary General's request that the cap be raised.

1992

- Feb 1 Iraq rejects 706 and 712.
- Feb 5 Council declares that Iraq "therefore bears full responsibility for their humanitarian problems."
- August US, UK and France establish no-fly zone in southern Iraq

1993

- Jan 13 US, UK and France attack Iraq with aircraft and cruise missiles. US and UK continue air strikes on January 17 and June 26.

1995

- Jan UN Secretary General Boutros Ghali issues a report calling sanctions a "blunt instrument"
- Apr 14 Resolution 986 allows Iraqi government \$2 billion in oil sales every six months. 13% of total available funds set aside for UN use in the northern governorates. Sanctions Committee must review and approve all supplies purchased through escrow account.

1996

- May 12 US Ambassador to the UN Madeleine Albright, in response to claims of half a million child deaths in sanctioned Iraq, replies: "I think this is a very hard choice, but the price - we think the price is worth it."
- May 20 Iraq is no longer able to provide survival sustenance for its civilian population. Iraqi government and UN reach agreement on implementing Resolution 986.
- Sep 3-4 In Operation Desert Strike, US fires cruise missiles at Iraqi targets
- Dec 10 First oil sales start, beginning the Oil-for-Food program. It has since been renewed mostly in six month phases.

1998

- Feb 20 Oil-for-Food oil sales cap increased to \$5.256 billion per six month phase.
- Dec UNSCOM's credibility is undermined by evidence that staff members seconded to the agency by the United States have compromised the independence of the agency and engaged in espionage and covert action to overthrow the Iraq government.
- Dec 15 UN weapons inspectors withdraw from Iraq due to impending aerial attacks by the United States and the UK.
- Dec 16-19 Operation Desert Fox air campaign by US and UK.

1999

- Mar 30 Security Council panel report finds that Iraq had "experienced a shift from relative affluence to massive poverty" and predicted that "the humanitarian situation in Iraq will continue to be a dire one in the absence of a sustained revival of the Iraqi economy, which in turn cannot be achieved solely through remedial humanitarian efforts."
- Aug 12 UNICEF estimates that an additional half million children under five who would be alive under normal circumstances had died in Iraq between 1991 and 1998.
- Dec 17 Resolution 1284 offers improvements in Oil-for-Food, although less than those recommended by the Security Council panel, and expresses its intention to suspend sanctions with the "fundamental objective of improving the humanitarian situation" in Iraq. The oil sales cap is removed and some items are allowed into Iraq without Security Council approval.

2000

- Jun 8 Resolution 1302 establishes a team of "independent experts to prepare by November 26, 2000 a comprehensive report and analysis of the humanitarian situation". Iraqi government does not allow the team to enter its territory. Security Council rejects the alternative of a report based on agency information and other reliable external sources.
- Dec 5 Resolution 1330 further expands lists of humanitarian items. Compensation fund reduced to 25% from 30% of oil revenues with the additional resources targeted to vulnerable groups.

2001

- May-Jun UK, French, and Russian draft resolutions propose various new approaches. The UK proposes a Goods Review List of potential dual-use items and land-based border monitoring of Iraq trade. Objections by Russia and by Iraq, as well as differences among Permanent Members blocks Council action.
- Jun 6 One month extension of Oil-for-Food under previous conditions.
- Jul 4 Lacking agreement with Iraq, five month extension of existing Oil-for-Food.
- Nov 29 Oil-for-Food program extended by six months in Resolution 1382. Resolution proposes a Goods Review List to be adopted in May.

2002

Jan 29

US President George W. Bush declares Iraq to be part of an “axis of evil” in his State of the Union message to Congress. Thereafter, reports abound of plans for a large-scale US military attack on Iraq.

May 14

Resolution 1409 adopts Goods Review List.

Aug 1

Iraq Foreign Minister Naji Sabri writes to UN Secretary General Kofi Annan suggesting that Iraq may be ready to allow arms inspectors back into Iraq, but scepticism remains that inspections will resume

APPENDIX II

“The Future of Sanctions” A Report of The Select Committee on International Development, of the UK House of Commons, 27 January 2000.

Excerpt... **Comprehensive Economic Sanctions — Iraq (paras 17-42)**

There is a clear consensus that the humanitarian and developmental situation in Iraq has deteriorated seriously since the imposition of comprehensive economic sanctions whilst, at the same time, sanctions have clearly failed to hurt those responsible for past violations of international law as Saddam Hussein and his ruling elite continue to enjoy a privileged existence.

Not all this humanitarian distress is the direct result of the sanctions regime. It appears that Saddam Hussein is quite prepared to manipulate the sanctions regime and the exemptions scheme to his own ends, even if that involves hurting ordinary Iraqi people. This does not, however, entirely excuse the international community from a part in the suffering of Iraqis. A sanctions regime which relies on the good faith of Saddam Hussein is fundamentally flawed.

Whatever the wisdom of the original imposition of sanctions, careful thought must now be given as to how to move from the current impasse without giving succour to Saddam Hussein and his friends. Any move away from comprehensive sanctions should go hand in hand with measures designed to target the real culprits, not the poor of Iraq but their leadership. Possibilities include a concerted attempt to target and either freeze or sequester the assets of Saddam Hussein and those connected to him, and the indictment of Saddam

Hussein and his close associates as war criminals.

We find it difficult to believe that there will be a case in the future where the UN would be justified in imposing comprehensive economic sanctions on a country. In an increasingly interdependent world such sanctions cause significant suffering. However carefully exemptions are planned, the fact is that comprehensive economic sanctions only further concentrate power in the hands of the ruling elite. The UN will lose credibility if it advocates the rights of the poor whilst at the same time causing, if only indirectly, their further impoverishment.