

THE ROLE PLAYED BY THE SECURITY COUNCIL IN CRIPPLING THE IRAQI ECONOMY 1990-2001

by Elias Davidsson (May 2002)

Abstract: The Security Council of the United Nations imposed comprehensive economic sanctions on Iraq in August 1990. The severity of these measures was unprecedented in U.N. history. This paper relates and annotates, in a chronological sequence, the various phases of the sanctions regime, as imposed and maintained by the United Nations. This chronology does not address the political or strategic aspects of the measures imposed on Iraq. Instead, it aims to provide students of the legality of these sanctions with an outline of salient UN decisions, activities and measures related to the sanctions. For a number of reasons, including the classified nature of many UN documents, it was impossible to offer a comprehensive account of these activities and measures. This paper should, therefore, be regarded as work-in-progress. Observations by readers are welcome and can be addressed to the author at edavid@simnet.is.

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Economic sanctions against Iraq were imposed by the Security Council of the United Nations as a response to Iraq's illegal invasion and occupation of Kuwait in August 1990. The deprivation imposed by the Security Council on the Iraqi people through economic sanctions is generally regarded as the most injurious case of such measures imposed since the establishment of the United Nations[1], "unique in their comprehensiveness [and] in the amount of support they initially received from states" [2]. Assessments differ, however, with regard to the extent of the harm, its precise contours, the attribution of responsibility for the plight of the Iraqi population[3] and the motivations of leading Security Council members for maintaining the sanctions[4].

Various factors have undoubtedly affected the extent of the plight, including the duration of the sanctions, the extent of international cooperation in enforcing the sanctions, the zeal of leading Western powers to maintain the sanctions, and enforce them by naval interdiction, the vulnerability of the Iraqi economy to the disruption of international food imports, the effects of the previous long war between Iraq and Iran, of the "Gulf

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- 1 Madeleine Albright former U.S. Ambassador to the United Nations and later U.S. Secretary of State, was asked on a national TV programme, considering that half a million children in Iraq might have already died as a result of the sanctions, whether the sanctions were justified. Far from rejecting the alleged fact, she said "I think this is a very hard choice, but the price - we think the price is worth it." (Transcript of the Programme "60 minutes" on CBS, 12 May 1996). As early as in 1991, before the "Gulf war", the unprecedented nature of the sanctions was acknowledged by U.S. politicians. Zbigniew Brzezinski, a known right-wing U.S. politician, affirmed: "Sanctions, un-precedented in their international solidarity and more massive in scope than any ever adopted in peacetime against any nation - I repeat - ever adopted against any nation, are inflicting painful costs on the Iraqi economy". 137 Congressional Record, Proceeding and Debates of the 102d Congress, First Session (No. 6, 1991) at S162.
 - 2 Paul Conlon, *United Nations Sanctions Management: A Case Study of the Iraq Sanctions Committee, 1990-1994*, Transnational Publishers, Inc., Ardsley, New York, (2000), p. 12.
 - 3 U.S. leaders have consistently argued that the entire responsibility for the plight of the Iraqi people is borne by the Iraqi President, Saddam Hussein.
 - 4 Explanations for this zeal range from officially declared justifications to counter-charges of a 'hidden imperial agenda', such as the subjugation of Arab peoples, the maintenance of Israel as the hegemonic regional power and effective Western control of Middle-Eastern oil resources.

war” of 1991[5] and the subsequent internal uprisings, and the totalitarian nature of the Iraqi regime. The compound effect of these various factors has led some observers to claim that an attempt to isolate the effects of the sanctions is futile.

As with other cases of coercive economic sanctions, the mechanism by which the Security Council sought to induce compliance by the Government of Iraq (hereafter “the GOI”), was to cripple the Iraqi economy with the hope that the material shortages felt by the population would trickle upwards in the form of protests or uprisings, forcing the government to yield to the Council’s demands [6].

In addition to their severity and injurious consequences, the sanctions imposed on Iraq presents a formidable challenge in terms of attribution of responsibilities and the characterization of the conduct. This difficulty is reflected by the dearth of serious analysis of these issues. From the point of view of victims, which informs our approach, the political community has the duty to sort out these questions and provide remedies.

Caveat

The following account will repeatedly refer to decisions by the Security Council and of the Iraq Sanctions Committee. These bodies purport to represent the “international community” in enforcing the UN Charter. The reality is however different. Leading members of these two bodies can impose their will through voting procedures *within* these organs and by economic leverage on other Council members *outside* the United Nations[7]. Decisions within these organs reflect therefore the balance of forces in the inter-state order, heavily tilted towards the United States and the industrially developed nations, who use non-democratic multilateral organs, such as the IMF and the World

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- 5 What is commonly designated as the “Gulf war” is more truthfully described as a one-sided slaughter. According to the News Digest of Keesing’s Record of World Events for February 1991, at the end of February “total casualty figures among the 700,000-strong allied force were estimated to be at least 131 killed in action and 100 in accidents or other incidents...Unofficial estimates of [Iraqi lives lost] varied wildly, with some experts suggesting that as many as 100,000 or 150,000 Iraqis might have died during the war. A more commonly cited figure, however, was of total casualties of 100,000, of whom up to 35,000 might have been killed.” Ramsey Clark, former U.S. Attorney General, estimates Iraqi lost lives as 125,000 [R. Clark, *The Fire This Time: U.S. War Crimes in the Gulf*, Thunder’s Mouth Press, New York, (1992)]. When a conflict yields a ratio of casualties between the two sides of nearly 1000 to 1, it cannot be truthfully termed as “war”. For this reason we have decided to enclose the term *Gulf war* in quotation marks.
 - 6 Proponents of economic sanctions do not generally dwell upon the details of this mechanism because doing so would reveal that the coercion is levelled at the civilian population. See, for example, the debate that took place in the U.S. on the Iraq sanctions prior to the Gulf “war”. This mechanism is merely hinted at, such as when William H. Webster, then Director of the CIA, declared before Congress that his “judgment has been and continues to be that there is no assurance or guarantee that economic hardships will compel Saddam to change his policies or lead to internal unrest that would threaten his regime.” [137 Congressional Record, Proceeding and Debates of the 102d Congress, First Session (No. 6, 1991) at S112]. The “hardships” are those to be felt by the general population, but this fact is glossed over.
 - 7 See in general Phyllis Bennis, *Calling the Shots: How Washington Dominates Today’s UN*, Olive Branch Press, New York, (1996); also Erskine Childers, *The United Nations and Global Institutions: Discourse and Reality*, 3 Global Governance (1997), pp. 274-75; see also Clark, *supra* note 5, pp. 153-56 (regarding economic pressures and bribes). Monitoring international telephone, telex, fax and computer communications through the ECHELON global surveillance system permits the U.S. and its trusted allies to obtain leverage against lesser powers (<http://www.echelonwatch.org>).

Bank[8], to pursue their own interests. The United States has been the most determined practitioner of economic coercion both unilaterally and through the UN[9].

According to the procedures of the Security Council, an affirmative vote is required to lift economic sanctions previously imposed by the Council. This procedure allows any single Permanent Member to prevent the lifting of sanctions. Reviewing the apparent success of U.S. efforts to secure other governments' support for the maintenance of sanctions against Iraq, Madeleine Albright, then U.S. Ambassador to the United Nations, said:

We have indicated that we would use the veto, if necessary, to prevent sanctions from being lifted prematurely[10].

This statement confirms the United States' determination to maintain sanctions, even against a majority in the Council favouring their lifting [11] and exposes the fallacy that the Security Council represents the "international community".

1 BEFORE THE "GULF WAR"

Merely hours after the invasion of Kuwait by Iraqi forces, in the early hours of 2 August 1990, the President of the United States declared a "*national* emergency to deal with the unusual and *extraordinary* threat to the *national* security and foreign policy of the United States" posed by that invasion [12] (emphasis added).

Having formally determined that the invasion of a country thousands of miles away threatens *extraordinarily* the *national* security of the United States, the U.S. President issued two executive orders, imposing a *unilateral* embargo on trade with Iraq and freezing Iraqi financial assets in U.S. banks[13]. On 2 and 4 August 1990, the British Treasury issued similar directives, freezing Iraqi financial assets under U.K. jurisdiction. The European Community and other states have reportedly taken similar action[14].

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- 8 Voting power within these institutions is based on countries' financial clout, not on the principle one-country, one-vote, applicable within the United Nations.
 - 9 According to the U.S.-based National Association of Manufacturers, dozens of countries are subject to unilateral U.S. economic and other types of sanctions in addition to those imposed multilaterally by the United Nations (see, *inter alia*, <http://www.usaengage.org/studies/nam.html>).
 - 10 Congressional Record (4 August 1995) (Senate), pp. S11448-S11450.
 - 11 In his confirmation hearing before the Senate Foreign Relations Committee on 17 January 2001, Secretary of State designate Colin Powell, said: "Iraq, at the time [of the "Gulf war"], we had a coalition of dozens of nations that fought that war and brought it to a successful conclusion. And today, America stands alone in that theatre, containing Saddam Hussein, together with Great Britain and several allies in the Gulf operations using naval vessels, but basically we're alone."
 - 12 Executive Order 12722 signed by President George Bush in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)).
 - 13 "Blocking Iraqi Government Property and Prohibiting Transactions With Iraq" and "Blocking Kuwaiti Government Property," (Executive Orders 12722 and 12723 of 2 August 1990), reported by Hull (1997) in Note Nr. 3. See also Przetacznik (?), pp.175-6.
 - 14 The Council of Ministers of the European Community issued on 8 August 1990 Rule (Directive?) No. 2340/90 preventing trade between the Community and Iraq and occupied Kuwait (cf. UN Doc. S/21612 of 23 August 1990). A new, more stringent, EU Directive was issued on 29 October 1990 (No. 3155/90), published in the Journal Officiel of the Community n. L304 of 1 November 1990.

1.1 Security Council Resolution 660 (1990)

Rushed to the conference room by calls from Washington, the members of the Security Council, adopted on the very same day Resolution 660 (1990), condemning the Iraqi invasion of Kuwait and *demanding* “that Iraq withdraw immediately and unconditionally all its forces to the positions in which they were located on 1 August 1990” [15]. The swiftness, determination and unanimity by the fifteen members of the Security Council in reacting to the invasion and occupation of Kuwait [16] was unprecedented in the annals of the United Nations [17].

1.2 Security Council Resolution 661 (1990)

Merely four days after the adoption of Resolution 660 (1990), on 6 August, the Security Council imposed *comprehensive* economic sanctions, in the form of Resolution 661 (1990). This Resolution mandated all states to prevent the import into their jurisdictions of all products and commodities originating from Iraq or [occupied] Kuwait. It also required states to prohibit the sale or supply from their territories of products and commodities to Iraq or [occupied] Kuwait with the exception of “supplies intended strictly for medical purposes, and, in humanitarian circumstances, foodstuffs...”. It finally required states to prohibit the transfer of funds or any other financial or economic resources to any commercial, industrial or public utility undertaking in Iraq or [occupied] Kuwait, except “payments exclusively for strictly medical or humanitarian purposes, and, in humanitarian circumstances, foodstuffs.”

The *declared goal* of the sanctions imposed by the terms of this Resolution was to force Iraq to “withdraw immediately and unconditionally all its forces to the position in which they were located on 1 August 1990.” Other demands were later grafted on the sanctions regime, such as by SCR 678 (1990), paving the way for the maintenance of the sanctions beyond the liberation of Kuwait[18].

Resolution 661 also established the Iraq Sanctions Committee (ISC) whose main tasks were to seek information from member states [19] on their implementation of the sanctions and process requests for humanitarian waivers. This latter task gradually became the main occupation of the Committee[20].

The following observations highlight the severity of the measures instituted by Resolution 661 (1990):

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- 15 Security Council resolution 660 (1990), para. 2.
 - 16 The invasion of Kuwait by Iraq was evidently not the only act of aggression in the annals of the United Nations but in no previous case of aggression did the Council act so swiftly and make such resolute demands.
 - 17 Details regarding the efforts by President George Bush to contact various world leaders the night of the invasion were reported in Newsweek, 13 August 1990 ("Baghdad's Bully"), at 18.
 - 18 Authorizing UN member states by SCR 678(1990) the right to “use all necessary means” to secure the initial goal, that of the liberation of Kuwait, the Council added another goal to the scope of this authorization, namely to “restore international peace and security in the area”, a open-ended formula that could later be invoked for the indefinite maintenance of sanctions.
 - 19 Para. 6(b) of Security Council Resolution 661 (1990).
 - 20 According to Paul Conlon, *Legal Problems at the Centre of United Nations Sanctions*, 65 Nordic Journal of International Law (1996), “[t]his activity occupies about 95 per cent of the correspondence of the larger sanctions committees.” (p. 83); see in general Conlon, *supra* note 2.

- (a) Health supplies were limited to those intended strictly for “medical” purposes. States were required to prohibit sales and supplies to Iraq and occupied Kuwait of items relating to sanitation, hygiene and the maintenance of health services and facilities[21].
- (b) Clothes, shoes, blankets, packaging materials for foodstuffs, soaps and detergents, kitchen supplies, refrigeration and heating equipment and spare parts, books, materials, and supplies for primary and secondary education, scientific journals, spare parts and materials for water treatment and sewage disposal, were banned under the terms of the resolution[22]. Banning educational materials was an unprecedented measure in UN-imposed sanctions[23].
- (c) As Iraq imported 70-80 percent of its food requirements[24], the restriction of food shipments to those circumstances deemed “humanitarian” by the Security Council[25], meant that deprivation of food was regarded by the majority in the Council as a legitimate weapon of coercion[26]. In its meeting of 12 September 1990, the Security Council explicitly declined to exempt food from the trade ban[27]. The Security

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- 21 According to Conlon, see *supra* note 2, pp. 60-61, this restrictive interpretation gave way, “as it evolved by 1992”, to a more liberal definition. “By 1994....petri dishes, dental alginate, pH indicator paper, and dehydrate culture media were treated as medicines”, though not vials, catherers, laboratory equipment and microscope slides which were classified as “non-objection” items (items that could be blocked by any member of the ISC).
 - 22 Some of these items were allowed after the “Gulf war” under the so-called “non-aligned gentlemen’s agreement” in the ISC, but due to lack of funds, Iraq was unable to import such items except in minimal quantities (Conlon, *supra* note 2, pp. 61-62). Other items, such as kitchen supplies, refrigeration and heating equipment and spare parts, were subject to the “no-objection” category, accordingly subjected to the veto of any member of the Committee. (*id.* p. 62).
 - 23 Tavernier notes, p. 27: “[I]l ne semble pas qu’on se soit ému de cette lacune qui touche pourtant à des droits de l’homme forts importants: droit à l’éducation et liberté d’expression...” [Paul Tavernier: “Sanctions Économiques et Droits de L’homme.” In *Nouvel ordre mondial et droits de l’homme*, edited by Paul Tavernier, 18-44. Editions Publisud; Université de Rouen, Centre de recherches et d’études sur les droits de l’homme et le droit humanitaire (CREDHO), 1993.
 - 24 René Provost, *Starvation as a Weapon: Legal Implications of the United Nations Food Blockade Against Iraq and Kuwait*, 30 Columbia Journal of Transnational Law (1992), p.583. See also Richard E. Hull. “Imposing International Sanctions: Legal Aspects and Enforcement by the Military.” March 1997 Available from <http://www.ndu.edu/ndu/inss/books/sanctions/contents.html>; as well as the Report of the Inter-Agency mission headed by the Executive Delegate for the United Nations Inter-Agency Humanitarian Programme for Iraq, Kuwait and the Iraq/Turkey and Iraq/Iran border areas, Sadruddin Aga Khan (1991), UN Doc. S/22799, Chapter 2.4 (para. 8) [Hereafter the Aga Khan Report].
 - 25 Sklaire notes (p. 635) that “[i]f decisions about the treatment of civilians are based on the political alignment of the Security Council, civilians will become political pawns in the conflict, rather than innocent bystanders - a situation that the nations of the world sought to prevent by creating the Fourth Geneva Convention and the Additional Protocols.” [Michael R. Sklaire, *The Security Council Blockade of Iraq: Conflicting Obligations under the United Nations Charter and the Fourth Geneva Convention*, 6 American University Journal of International Law and Policy (1991)].
 - 26 Hull, *supra* note 24, writes (in Chapter on Iraq): “Iraq had historically depended on imports for 75 percent of its food consumption. Although the new Orders provided an exception for donations of food when needed to alleviate human suffering, President Bush stated in his Press Conference of August 8 that exports of food to Iraq would be fully subject to the embargo.”
 - 27 Provost, *supra* note 24, p. 580. According to Conlon, *supra* note 2, the P-3 (U.S., U.K. and France) “asserted that food deprivation as applied to national economies was permissible and

Council allowed into Iraq nominal relief by outside actors [28] only intended for foreigners trapped in Iraq or in occupied Kuwait, but not for the Iraqi civilian population[29].

- (d) The Council required UN member states to prohibit import into their jurisdictions of products and commodities originating in Iraq. Since Iraq derived 90-95 percent of its foreign revenues from the export of oil and oil-related products, the purpose of this measure had the foreseeable effect of preventing Iraq from raising funds necessary for securing food and medicines[30]. “[N]early \$4 billion of [Iraq’s] assets [were] frozen, mainly in the United States and Europe”[31].

The immediate economic effects of the measures imposed by the Security Council were to prevent the importation into Iraq of most civilian goods and to deny the Government of Iraq resources necessary to fund public services, pay for the reparation and maintenance of public facilities and keep the economy functioning.

1.3 Other sanctions-related measures before the “Gulf war”

U.S. unilateral measures

On 12 August 1990, President Bush ordered the U.S. Navy - without a Security Council mandate - to halt Iraqi imports and exports on international waters, but avoided calling this action a “blockade” [32].

Security Council Resolution 665 (1990)

On 25 August 1990, the Security Council decided under the terms of Resolution 665 (1990) to permit member states to “halt all inward and outward maritime shipping, [if

that only food deprivation as applied to human beings was subject to strictures under humanitarian law.” (p.46)

- 28 Shotwell reports that the Sanctions Committee permitted certain relief shipments (such as by the Indian Red cross) but denied Vietnam the right to send food to Vietnamese labourers in Iraq [Charles B. Shotwell, *Food and the Use of Force: The Role of Humanitarian Principles in the Persian Gulf Crisis and Beyond*, Fletcher Forum on World Affairs (1992)]. Provost, *supra* note 24, mentions denials by the Committee to Sri Lanka and Bulgaria for humanitarian relief shipments, including a 200-ton powdered milk consignment.
- 29 Shotwell, *supra* note 28, provides details of such punctual relief efforts, some of which were authorized by the Sanctions Committee while others were denied. He writes for example: “The Sanctions Committee, while permitting the Indian relief effort [to distribute aid to Indian citizens and Iraqi children], denied permission to Vietnam to send to (sic) boatloads of food to Vietnamese labourers in Iraq. This was done on the basis of lack of need, though there are reports of increasing shortages among the Vietnamese and Sri Lankans.”
- 30 Sklaire, *supra* note 25, p. 612, Note 16, cites Doyle, writing in the Independent (U.K.), 1. Sept. 1990, that the “United States government sought to consider humanitarian circumstances in very limited situations; refusing the delivery of foodstuffs for at least three months because Iraq expected a bumper harvest.”
- 31 Leila Deeb, IPS news agency, Amman, 3 December 1993; in another IPS feature of 7 April 1993, Iraqi health minister Madhat Mubarak mentions \$4.5 billion dollars as the amount of “frozen funds” unavailable for the purchase of humanitarian goods.
- 32 Sklaire, *supra* note 25, p. 616, observes: “Calling the action a military ‘blockade’ could invoke claims that the situation had become an armed conflict, requiring adherence to the laws of warfare and restricting the extent of the embargo’s scope to protect civilians. Subsequently, the Security Council passed resolution 665, authorizing the use of military force to enforce economic sanctions, which ended the need for such cautious statements. Immediately following the vote, officials acknowledged that the embargo had become a blockade; a military operation requiring adherence to the laws of armed conflict, including the 1949 Geneva Conventions and the Protocols of 1977.” In a footnote the author adds that Secretary of State James Baker “avoided using the term blockade because he recognized that it implied activities carried out only in wartime”. See also Hull, *supra* note 24, Notes 12-13

necessary by force,] in order to inspect and verify their cargoes and destinations and to ensure strict implementation of the provisions of such shipping laid down in resolution 661 (1990).” This decision legitimized *post-facto* the measures previously taken by the United States (see above). Due to opposition in the Council to any United Nations involvement in enforcing the sanctions through naval interdiction, the control of such military measures remained by default under United States “coordination” [33]. According to one author this Resolution transformed the economic embargo into a “full-fledged blockade”[34], and thus subject to the provisions of the laws of warfare [35]. This view was shared by former Iraqi Ambassador to the UN, Dr. Al-Anbari, who expressed the view that the military enforcement of the embargo against Iraq was a “drastic mutation in the nature of economic sanctions” into a “maritime blockade coupled with an air blockade under (...) resolution 670 (1990)”, tantamount to an “act of war”[36].

Security Council Resolution 666 (1990)

On 12 September 1990, the Security Council adopted Resolution 666 (1990). After having effectively imposed a food embargo on Iraq through its previous resolutions, the present Resolution instructed the Sanctions Committee to keep the situation regarding foodstuffs in Iraq and occupied Kuwait under “constant review”, preparing for “circumstances that may arise in which it will be necessary for foodstuffs to be supplied to the civilian population in Iraq or Kuwait in order to relieve human suffering.”

The preamble of this Resolution provided “that it is for the Security Council, alone or acting through the [Sanctions] Committee, to determine whether humanitarian circumstances have arisen”[37]. In operative paragraph 5 the Council decided “that if the Committee, after receiving the reports from the Secretary-General, determines circumstances have arisen in which there is an urgent humanitarian need to supply foodstuffs to Iraq or Kuwait in order to relieve human suffering, it will report promptly to the Council its decision as to how such need should be met.”

Cuba proposed to include a provision declaring that “access to basic foodstuffs and to adequate medical assistance is a *fundamental human right* to be protected under all circumstances” (emphasis added)[38]. This amendment was defeated by the votes of the

33 Sklaire, *supra* note 25, pp. 612-3, notes that “[f]or the first time in its history, the Security Council authorized the use of military action to enforce mandatory sanctions against a member state of the United Nations.” See also Hull, *supra* note 24(Chapter on Iraq) who provides some insight into the reasons why the military interdiction measures (or blockade) were pursued under U.S., rather than UN command.

34 Provost, *supra* note 24, p. 580.

35 Article 42 of the UN Charter stipulates: “Should the Security Council consider that [non-military] measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, **blockade**, and other operations by air, sea, or land forces of Members of the United Nations”. (emphasis added). It is however not settled whether interdiction measures, such as imposed on Iraq, amount to a blockade in the legal sense.

36 Abd al-Amir al-Anbari. “The UN Sanctions Regime: The Case of Iraq.” presented at The Sanctions - Impact and Justifications, Geneva, 7-8 Nov 1996, 1996, p. 7.

37 Provost, *supra* note 24, observes that “[b]ecause the Sanctions Committee...always met *in camera* and never officially released its decisions, it is difficult to know precisely how much food was allowed to reach Iraq and Kuwait in compliance with the humanitarian ‘loophole’.” He reports that his attempts to find out more from the Office of the Political and Security Council Affairs of the U.N. and from various national missions to the U.N. , proved unsuccessful.

38 UN Doc. S/21742/Rev. 1.

U.S., the U.K., France, Canada and Finland against the votes of China, Cuba and Yemen, with the rest of the Council members abstaining. The original resolution, unamended, was then put to vote and adopted by 13:2 with only Cuba and Yemen casting a negative vote. China, who initially supported the Cuban amendment, joined the majority.

Law No. 57 on protection of Iraqi property

On 16 September 1990, the Higher Revolutionary Council of the Republic of Iraq, reacting to actions by governments hostile to Iraq,

adopted with retroactive effect from 6 August 1990 Law No 57 on protection of Iraqi property, interests and rights in Iraq and elsewhere...Article 57 of the Law froze all property and assets and income from them held at the material time by the governments, undertakings, companies and banks of those States which had adopted arbitrary decisions against Iraq. [39]

Security Council Resolution 670 (1990)

On 25 September 1990, the Council, under Resolution 670, sought to further tighten the isolation of Iraq by demanding member states to prevent all air links with the country except for humanitarian flights authorized by the Sanctions Committee [40]. It also allowed member states to detain Iraqi merchant vessels suspected of circumventing the embargo. Cuba's representative, in the debate on this Resolution, termed the sanctions "inhumane" for denying "thousands of innocent people, including children, the elderly, and women, a *fundamental right* no one has the authority to take away - the right to food and to appropriate health care." (emphasis added).

2. FROM THE "GULF WAR" TO "OIL-FOR-FOOD"

2.1 Destruction of Iraq's infrastructure

The events leading to the "Gulf war" and the conduct of the hostilities have been addressed by many authors and will consequently not be dealt with in this study. The consequences of the "Gulf war" will be dealt with only to the extent that they bear on the imposition and the impact of the sanctions.

On 16 January 1991, the allied forces, led by the United States, acting on an open-ended licence to use force, in the form of Security Council Resolution 678 (1990), began a relentless bombing campaign against the whole territory of Iraq. Los Angeles Times reported on 5 February that a British defense consultant in Dhahran had calculated that "the tonnage of high explosive bombs already released [on Iraq] has exceeded the combined allied air offensive of World War II"[41]. The bombing campaign lasted 42 days. [42] It left "a devastated land, a ruined society, massive human casualties, and a

39 *Dorsch v. European Council and European Commission* (2000) [*Dorsch Consult Ingenieurgesellschaft mbH, appellant v. Council of the European Union and Commission of the European Communities, defendants*, European Court of Justice, Luxembourg, 15 June 2000, Case C-237/98 P].

40 SC Resolution 670 (1990), para 3-7.

41 Los Angeles Times, 5 February 1991, cited by Clark (1992), p. 41.

42 Clark. *supra* note 5, p.59, estimates that more than 88,500 tons of explosives were dropped on Iraq in the 42 days of the "Gulf war". He provides evidence for his claim that the "bombing was a... calculated... strategy to bring Iraq to its knees by destroying the essential facilities and support systems of the entire society....The bombing of Iraq's cities and infrastructure had nothing to do with driving Iraq from Kuwait. It was intended to cripple a

traumatised survivor population struggling to comprehend the apocalypse that had befallen it”[43]. While publicly disclaiming any intention to harm civilians or civilian objects[44], the allied forces reportedly targeted, disabled or destroyed major civilian infrastructures over the whole territory of Iraq[45].

As early as on 12 February 1991 Ramsey Clark, who visited Iraq during the bombing campaign, wrote to both President Bush and UN Secretary General Perez de Cuellar a ten-page letter in which he stated, *inter alia*:

The bombing constitutes the most grievous violation of international law. It is intended to destroy the civilian life and economy of Iraq. It is not necessary, meaningful or permissible as a means of driving Iraq from Kuwait...The bombing that has occurred...is uncivilised, brutal and racist by any moral standard. With few if any exceptions we witnessed, the destruction is not conceivably within the language or contemplation of Security Council Resolution 678 [46].

The damage to Iraq from the allied bombings in monetary terms range from \$30-50 billion, a CIA estimate[47], to the more plausible sum of \$200 billion, estimated by Iraq’s Minister of Trade Mohammed Mohdi Saleh[48].

2.2 The Ahtisaari report

On 20 March 1991, Martti Ahtisaari, U.N. Under-Secretary-General, who led, shortly after the “Gulf war”, a fact-finding mission to Iraq to assess humanitarian needs, forwarded his mission’s findings in a report addressed to the Secretary-General (hereafter the “Ahtisaari report”) [49].

This report, while not purporting comprehensiveness, provides a frame of reference against which Resolution 687 (1991) by the Security Council can be assessed. The report

developing Third World country that was a politically independent military power in the region; and that was rich in oil and committed to its own economic development.” Simons, p.173, concurs and adds: “This meant that Iraq was subjected to the equivalent of one Hiroshima-size atomic bomb a week (seven in all) over the period of the war, a scale of destruction that has no parallels in the history of warfare.” [Geoff Simons, *Imposing Economic Sanctions: Legal Remedy or Genocidal Tool ?*, Pluto Press, London; Sterling, Virginia, (1999)].

43 Simons, *supra* note 42, pp. 173-174.

44 Clark, *supra* note 5, p.64, writes: “[T]he three-volume Pentagon report issued in April 1992 claimed that the long-term crippling of Iraq’s electrical grid was an accident - that the allies had meant only to temporarily damage the grid. But if the United States had really wanted Iraq to be able to restore its electrical power, it would have lifted sanctions after the war to allow Iraq to buy parts to repair the damage. And the damage to Iraq’s infrastructure was comprehensive. Electric power was only one part of the overall strategy.”

45 See *Needless Deaths in the Gulf War*, Human Rights Watch, New York, (1991) Middle East Watch (1991; also Clark, *supra* note 5.

46 Clark, *supra* note 5, p. 181. The charge of racism appears justified. Clark (p. 208) notes that neither General Colin Powell nor General Schwarzkopf were interested in acknowledging the number of Iraqis killed by the U.S. in the “Gulf war”. A “policy” against counting enemy dead was instituted by the latter, disregarding U.S. obligations under the provisions of the Geneva Conventions of 1949. Former Navy Secretary John Lehman reportedly told a closed Pentagon gathering that an estimated 200,000 Iraqis had been killed by the U.S. during the “Gulf war”.

47 Reported by Clark, *supra* note 5, p. 89.

48 *Ibid*, p. 87.

49 UN Doc. S/22366, 20 March 1991.

highlights particularly the effects on civilian life caused by the destruction of Iraqi infrastructure. For these reasons, extensive quotations will be presented.

“I and the members of my mission were fully conversant with media reports regarding the situation in Iraq and, of course, with the recent WHO/UNICEF report on water, sanitary and health conditions in the Greater Baghdad area. It should, however, be said at once that nothing that we had seen or read had quite prepared us for the particular form of devastation which has now befallen the country. The recent conflict has wrought near-apocalyptic results upon the economic (sic) mechanized society. Now, 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.” (para. 8)

The Ahtisaari report notes that his mandate was only to assess “the need for urgent humanitarian assistance”, not “the requirements for reconstructing Iraq’s destroyed infrastructure, much less, to developmental matters.” It adds:

“[A]s a result of war, virtually all previously viable sources of fuel and power (apart from a limited number of mobile generators) and modern means of communication are now, essentially, defunct. 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.” (para. 9)

With due regard to the narrow humanitarian mandate of the mission, the report recommended that

sanctions in respect of food supplies should be immediately removed, as should those relating to the import of agricultural equipment and supplies.... Safeguarding the harvest means the urgent importation of fertilizers, pesticides, spare parts, veterinary drugs, agricultural machinery and equipment, etc. The mission was able to quantify many of these needs. The disappearance of vegetables from the country’s markets also appears likely by the summer and seed importation is crucial. “ (para. 18)

Regarding the question of drinking water and sanitation, the report observes:

[...] All water-treatment stations operated on electric power; about 75 per cent had standby diesel-powered generators. Sewage was treated to an acceptable standard before being returned to the rivers (para. 20)... With the destruction of power plants, oil refineries, main oil storage facilities and water-related chemical plants, all electrically operated installations have ceased to function.” (para. 21)

The mission identified various problems that the sanctions would exacerbate:

“[H]eavy sewage-pollution of water intakes; absence or acute shortage of water-treatment chemicals, especially aluminium sulphate (alum) and chlorine; lack of power to operate equipment; lack or shortage of diesel to run generators; inability to repair generators because of lack of spare parts; in some instances a total absence of generators; the destruction of some stations; absence of water-testing; lack of a health surveillance system in respect of communicable, and especially, water-borne diseases. A further major problem, now imminent, is the climate. Iraq has long and extremely hot summers, the temperature often reaching 50 degrees Celsius. This has two main implications: (a) the quantity of water must be increased, and a minimum target of 50 litres per person per day has to be attained (this entails a gross output of 65 litres per person at the source); and (b) the heat will accelerate the incubation of bacteria, and thus the health risks ascribable to the water quality (already at an unacceptable level) will be further exacerbated - especially viewed in the overall sanitary circumstances which have already led to a fourfold increase in diarrhoeal disease incidence among

children under five years of age, and the impact of this on their precarious nutritional status. (para. 23)

The importance of telecommunications and transportation to the provision of basic health care was highlighted in the report:

“[T]he total lack of telephone communication and drastically reduced transport capability pose other problems to the health system since basic information on communicable diseases cannot be collected and disseminated, and essential drugs, vaccines and medical supplies cannot be distributed efficiently to the country.” (para. 25)

Concluding from the above findings, the mission made the following “recommendations regarding water, sanitation and health, *on an urgent humanitarian basis*” (emphasis added):

- (a) For water needs have to be calculated in such a way as to permit a minimum quantity of safe water through the hot season from April to September. Assistance, similar to that approved earlier, should be provided to cities outside Baghdad, including the necessary quantities of fuel for generators and transport; lubricants, for engines; aluminium sulphate; chlorine; generators for water stations; skid-mounted river water treatment units; chemical dosing pumps; gas chlorinators; pump sets; spare parts; collars for water pipes; and reagents for chemical tests;
- (b) For sanitation: fuel and spare parts for garbage collection trucks, as well as insecticides; fuel and spare parts for the sewage disposal system (all of which is mechanical and imported); and hoses for drawing water with tanker-trucks;
- (c) As regards medical needs: “a number of items were essential to deal with urgent humanitarian needs and established requirements. They include the provision of essential drugs and vaccines, as approved earlier, on a more extended scale, chemicals and reagents, generators, battery-operated incubators, means of alternative communication, requirements for the reinstitution of the cold chain for vaccines, and some vehicles.” (para. 27)

And in order to reemphasize the desperate situation it had observed in Iraq, the authors warned: “Without fuel, power and communications, the needed measures indicated above could, however, prove more or less ineffectual.” (para. 27 (d))

In a subsequent report, the UN Secretary-General referred to the Ahtisaari report and concluded that

[o]nly through the regeneration of the Iraqi economy can these basic requirements be met on a secure and continuing basis. The key is oil-based energy production, permitting Iraq to fund imports that its people must have, and to drive machinery upon which their lives depend....[50]

The Secretary-General referred to the crucial importance of rehabilitating communications, destroyed by the allied bombing campaign:

It is also an immediate priority to help re-establish a basic communication system so that not only an emergency programme, but the rehabilitation activities that must invariably follow in its wake, can be implemented in an effective and coordinated manner. As the Ahtisaari report pointed out, such has been the destruction that communication in Iraq has been reduced to a person-to-person basis[51].

50 Appeal by the UN Secretary-General, The Humanitarian Emergency in Iraq, 8 April 1991.

51 *Ibid.*

2.3 Security Council Resolution 687 (1990)

On 3 April 1991, the Security Council adopted Resolution 687 (1991), sometimes referred to as the “mother of all Resolutions”. A brief and indirect reference to the Ahtisaari report can be found in its 24th paragraph, if one reads carefully. While Resolution 687 (1991) is considered the “longest and most complicated Resolution ever approved by the Security Council” [52], the main recommendations made in the Ahtisaari report were ignored. The Resolution contains a long list of demands made upon the Government of Iraq (on boundaries with Kuwait, destruction of weapons, return of Kuwaiti property and prisoners of war, foreign debt, compensation to Kuwaiti and other victims, etc.), as conditions for lifting the sanctions.

The following provisions addressed the humanitarian aspects of the sanctions:

(a) Export of foodstuffs to Iraq was no longer to be subject to the determination by the Security Council of “humanitarian circumstances” in Iraq. Notification was sufficient [para. 20].

(b) Other “materials and supplies for essential civilian needs as identified in the report of the Secretary-General dated 20 March 1991 [the Ahtisaari report] and in any further findings of humanitarian need by the [Sanctions] Committee” would henceforth be allowed to be exported to Iraq “with the approval of that Committee...”. [para 20].

(c) The Sanctions Committee was empowered to allow the import of Iraqi products (oil) into member states, in order “to assure adequate financial resources on the part of Iraq” for humanitarian imports [para. 23]. Al-Anbari provides an interesting insight into the practical implementation of this provision:

This paragraph authorized the Sanctions Committee to approve such [oil exports] so as to enable Iraq to pay for Iraq’s imports of foodstuffs, medicine and essential civilian supplies. Such an exception was not made as a matter of course but was a condition some members of the Council insisted upon for their approval of the resolution. However some members acting through the Sanctions Committee vetoed all requests made by Iraq to make use of the exception claiming that such authorization by the Committee is a last resource to be used only after Iraq’s exhausting all other available means. This practice by some permanent members in the Sanctions Committee illustrated the manipulation tactics used by such members to cancel out practically what they conceded to other members of the Council to secure their votes in favour of a given resolution. [53]

The effect of these apparent relaxation measures was effectively negated by the inability of Iraq to raise funds through oil exports or access frozen funds necessary to pay for these imports. According to an assessment by Paul Conlon, former deputy-secretary of the ISC:

Iraq had in those years [1990-1994 - E.D.] about USD 1 billion to buy things from abroad. Probably the goods purchased were paid for by 1) money belonging to the Takriti family and kept outside of Iraq; 2) money belonging to rich Iraqi families living abroad, particularly in Jordan; 3) remittances from expatriates in the form of payment for exports to Iraq; 4) liquidation of bullion in Amman, possibly also the sale of used military equipment via Amman (though this amount could not be too high). When the Iraqis ran out of bullion, this came to a halt. Originally assets in

52 David Cortright, and George A. Lopez, *The Sanctions Decade: Assessing UN Strategies in the 1990s*, Lynne Rienner Publishers, Boulder; London, (2000), p. 42.

53 Al-Anbari, *supra* note 36.

foreign banks could be tapped, later this was not legally possible but presumably occurred to some extent. [54]

The debate in the Security Council on the draft of SCR 687

UN Document S/PV.2981 of 3 April, provides a verbatim of the debate in the Security Council on the draft of SCR 687 (UN Doc. S/22430). Not all members of the Council were happy with the draft.

The delegate of Zimbabwe in the Council, Mr. Zenenga, pointed out that the Council "tries to ignore the fact that the continuation of those sanctions, imposed rightly or wrongly, is doing great harm to the people of Iraq", that it has "disregarded what [the Ahtisaari] report described in very dramatic terms. This afternoon it will continue and confirm a sanctions regime that is not only unjustified but also the cause of the ongoing problems and suffering of the Iraqi people." He added:

[W]e have now a draft resolution that is sufficiently sensitive and responsive not to the claims, suffering and anguish of the people of Iraq or of dozens of States that are suffering the very serious consequences of observing the Council's sanctions, but to the payment of reparations to national Governments and foreign companies. This was clearly seen after the fruitless negotiations carried out by the non-aligned countries with some of the sponsors of this draft resolution.

The delegate of India in the Security Council, Mr. Gharekhan, also referred to the Ahtisaari report and added:

The least that the Council can and should do is formally to lift the sanctions against the supply of all the commodities listed in the Ahtisaari report. It is not necessary, in our view, any longer to insist on even the simplified procedures of notification and no objection....My delegation firmly believes that all non-military sanctions against Iraq should also be lifted as soon as Iraq conveys acceptance of the present draft resolution.

In spite of the critical remarks by the above two delegates, they voted for the draft resolution. Only Cuba opposed the resolution while Ecuador and Yemen abstained. After the vote was taken, the delegates of the five permanent members of the Council, the United States, France, China, the USSR and the UK commented on the resolution, followed by the delegates of Austria, Romania, Kuwait and Iraq.

In his address to the Council, the U.S. delegate, Mr. Pickering, expressed the "hope that the people of Iraq will insist on putting the disaster which their leaders have created behind them and will join with the rest of the international community in building the foundation for lasting peace and security." It is difficult to know what he meant by such a statement. His government was, after all, intent in keeping the people of Iraq deprived of items necessary for life and preventing Iraqis from travelling to other countries. How could they, under these externally-imposed conditions, "join with the rest of the international community in building the foundation for lasting peace and security" ?

The legality of SCR 687

Notwithstanding the humanitarian provisions of Resolution 687 (1991), there are reasons for doubting the procedural propriety of this Resolution and thus its legality. The economic sanctions against Iraq were imposed by Resolution 661 (1990) of 6 August 1990 "as a consequence" of the failure of Iraq "to comply with paragraph 2 of Resolution 660 (1990)", namely the "immediate and unconditional withdrawal" of Iraqi forces from Kuwait. The purpose of Resolution 661 (1990), articulated in its Preamble,

54 Personal communication, 12 August 2001.

was solely “to bring the invasion and occupation of Kuwait by Iraq to an end and to restore the sovereignty, independence and territorial integrity of Kuwait.” According to the principle *pacta sunt servanda* (fulfilling treaty provisions in good faith), the sanctions should have been lifted as soon as the purposes for which they were imposed had been secured, namely after the liberation of Kuwait.

But the Council did not lift the sanctions after the liberation of Kuwait. Instead, the Council substituted a new set of demands for those of Resolution 661 (1990) as a condition for lifting the sanctions. By resorting to such a procedural shortcut the Council obviated the need to make a new determination of a “threat to peace” (Article 39 of the UN Charter) required for the imposition of economic sanctions (Article 41 of the Charter). It is suggested that, had the Council observed the proper procedure of the UN Charter, the United States and its Council allies could not have secured a formal determination by the Council that a “threat to the peace” emanated from a defeated and devastated Iraq. In all fairness, no one was really duped by this procedural shortcut. All members of the Council apparently acquiesced to this corruption of the UN Charter.

In a long letter addressed to the Secretary-General of the United Nations and to the President of the Security Council, dated 6 April 1991, Iraq’s Minister for Foreign Affairs Ahmed Hussein elaborated upon what Iraq regarded as U.N. double standards and the Resolution 687’s “biased and iniquitous nature”. By this “selective treatment of the Iraqi people” the Council had “merely confirmed” that it had become “a puppet which the United States of America is manipulating in order to achieve its political designs in the region...”. The letter highlighted the resolution’s incompatibility “with purposes and objectives of the Charter”. It charged that the “resolution constitutes an unprecedented assault on the sovereignty [of Iraq], and the rights that stem therefrom, embodied in the Charter and in international law and practice.” The letter appealed on “men of conscience” and “world public opinion to make an effort to understand the truth as it is and the need to ensure the triumph of justice” and concluded by recognizing that Iraq “has no choice but to accept this resolution”[55].

2.4 The Aga Khan Report

On 17 July 1991, the UN Secretary General presented to the Security Council a report by an inter-agency mission to Iraq [56]. The mission, headed by the Secretary General’s Executive Delegate Sadruddin Aga Khan, visited Iraq from 29 June to 13 July 1991. Its task was to assess humanitarian needs and recommend how to address these needs.

While the Ahtisaari report (*supra*) provided the first approximations of urgent humanitarian needs in Iraq, the report by the Aga Khan mission benefited from better pre-mission preparation, multi-disciplinary expertise and a longer observation and study period.

The Aga Khan report assessed the needs of four major sectors: (a) Water, sanitation and environmental health; (b) health; (c) food; and (d) energy. These sectors were identified as crucial for the well-being of the population. As the report provided the Security Council with authoritative facts, including experts’ assessments of needs, its recommendations serve as a useful yardstick when evaluating the decisions subsequently made by the Security Council and the Sanctions Committee.

The dramatic and deteriorating humanitarian situation in Iraq is conveyed at the very beginning of the report:

55 The letter is reproduced in John Norton Moore, *Crisis in the Gulf: Enforcing the Rule of Law*, Oceana Publications, Inc., New York; London; Rome, (1992), p. 497-505, as Annex 8. It is also available as UN Doc. S/22456 of 6 April 1991.

56 UN Document S/22799.

The aftermath of the Persian Gulf war of January and February 1991 presented a compelling spectacle of suffering and devastation to the international community...In Iraq itself, the upheaval's insidious effects are leading to the gradual but inexorable collapse of essential services, leading to the risk of a humanitarian crisis whose eventual dimensions would dwarf today's difficulties.

Expecting to be accused of exaggerating the plight in Iraq, the authors write:

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. This cannot leave us unconcerned, whatever the solution proposed. In the pages of this report we have tried, in accordance with our purely humanitarian remit that was ours, to diagnose the problem and suggest remedies. It will be for the *international community* to decide how to respond further. [from the Foreword] (emphasis added)

It was ultimately not the “international community” who decided how to “respond further”, but the Security Council - dominated by one or two permanent members - that eventually decided [57] to disregard the mission's recommendations.

Background facts on Iraq

The report provides useful background information on the socio-economic development in Iraq and its government's economic policies, a useful baseline for evaluating subsequent conditions in Iraq.

As of mid-1990, Iraq was in certain respects fast approaching a standard comparable to that of some highly industrialized countries in the sector areas of concern to the present mission. A wide-reaching and sophisticated health system had been put in place, capable of routinely providing services such as kidney dialysis treatment in regional hospitals. The provision of clean drinking water was the norm, with over 1,500 treatment units nationwide providing a very high quantity of water (e.g., over 450 litres per person per day in Baghdad). Sewage treatment, including a number of very large and technically sophisticated plants, kept the quality of the water in the Tigris and Euphrates rivers at a reasonable level. While poverty and moderate malnutrition remained a problem in some areas, severe malnutrition, and related syndromes such as marasmus and kwashiorkor, were not major public health problems. A key component of the country's infrastructure and services was the generation of power not only for the 70 per cent of the population living in urban areas, but also for many of those in outlying regions, as well as for the large amount of irrigated farm land. The country had a modern telecommunications network in both the urban and the rural areas, serving millions of Iraqis through 900,000 telephone lines. (para. 7)

An essential basis for this complex and extensive infrastructure was trade. For example, most of the machinery, as well as the spare parts to keep it running, was obtained from outside the country. Approximately 70 per cent of the food needs of the country were met through imports from abroad. What primarily paid for this level of imports was revenue from the sale of oil. (para. 8)

The above account allows to gauge the socio-economic priorities of the Government of Iraq prior to the imposition of sanctions.

57 See Security Council resolution 706 (1991), *infra*.

Quantifying needs in monetary terms

The Aga Khan mission estimated the funds needed to restore Iraq's infrastructure to its pre-war condition as follows: \$12 billion for the power-generating capacity, \$6 billion for the oil sector, \$450 million for the water and sanitation systems, \$2.64 billion for food imports [for the period July 1991-June 1992] [58] and \$500 million for agricultural imports. "While these calculations were not possible for health, an indicative figure would be the typical level of international imports of the health sector for one year, which has been approximately \$500 million." (para. 27). The total amount thus required to restore infrastructure and provide for humanitarian needs of the Iraqi people was thus estimated in the mission's report at approximately \$22 billion. Ultimately, the required amounts increased year by year, as the shortages of spare parts contributed to the cannibalization and the dilapidation of still functioning installations.

However, the mission "attempted to determine the costs for some lower level of actions, over a one-year time-frame":

Figures were calculated for providing approximately two fifths of the pre-war per capita levels of clean water and putting a corresponding proportion of the damaged sewage-treatment capacity back in operation. Expenditures for imports for health services were calculated at the pre-war level. Food import calculations were based on the ration level that WFP provides to sustain disaster-stricken populations. Special supplemental feeding programmes to support the nutritional needs of malnourished children and pregnant and lactating mothers for one year were calculated. Power generation estimates were based on restoring approximately one half of the pre-war capacity of the country. For the oil sector, the mission worked out a cost based on the consolidation of existing refineries, the restoration of lubrication units, the repair of the Iraq-Turkey pipelines, and of the oil facilities in the Kirkuk areas. This would not include repair of the southern oil fields." (para. 28)

The mission estimated the costs for this *greatly reduced level* of services at approximately \$6.8 billion over a one-year period (para. 29) [emphasis added]

Summary

In its concluding remarks the Aga Khan mission emphasized the "rights [of the Iraqi population] to food, water, shelter and adequate health care" that "must be assured to all people in all areas" (para. 134).

It added:

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 (para. 138).

The report by the Aga Khan mission essentially corroborated the overall findings of the Ahtisaari mission, while providing a more extensive [59] and reliable picture of sectorial problems as well as quantifying in monetary terms the minimal and urgent needs of the Iraqi population.

58 Aga Khan mission report, *supra* note 24, p. 32.

59 The Aga Khan report [*ibid*] includes a substantive section on the telecommunications sector and the effects of the devastation of this sector for humanitarian needs.

2.5 Security Council Resolution 706 (1991)

On 15 August 1991 the Security Council adopted Resolution 706, ostensibly as a response to the Aga Khan and the Ahtisaari reports. The Resolution specified the following conditions under which Iraq could secure the importation of humanitarian goods:

(a) The GOI would be permitted to export oil up to a gross ceiling of \$1.6 billion for a one-time period of six months. The proceeds of such sales would be paid directly by the buyers into a UN-managed escrow account (para. 1(b)), a “part of which” would be “made available to the Secretary General” to finance the “purchase of foodstuffs, medicines and materials and supplies for essential civilian needs” in Iraq.(para 2).

(b) The approval of the Sanctions Committee would be required for each individual Iraqi (oil) export transaction (para. 1(a)).

(c) The Security Council would have to approve a “scheme for the purchase of foodstuffs, medicines and materials and supplies for essential civilian needs as referred to in paragraph 20 of Resolution 687 (1991)” and “all feasible and appropriate United Nations monitoring and supervision for the purpose of assuring their equitable distribution to meet humanitarian needs in all regions of Iraq and to all categories of the Iraqi civilian population as well as all feasible and appropriate management relevant to this purpose” (para. 1(c)).

(d) Iraq would have to acquiesce to the decision that a “part of the sum” of the escrow account be “made available to the Secretary General” to cover the “cost to the United Nations of its roles under this Resolution and of other necessary humanitarian activities in Iraq” (para. 2).

(e) Iraq would have to acquiesce to the decision that a “part of the sum” of the escrow account “shall be used” by the Secretary General “for appropriate payments to the United Nations Compensation Fund, the full costs of carrying out the tasks authorized by Section C of Resolution 687 (1991), the full costs incurred by the United Nations in facilitating the return of all Kuwaiti property seized by Iraq, and half the costs of the Boundary Commission.” (para. 3)

According to Mr. Rochereau de la Sablière, France's Permanent Representative to the Security Council, speaking in the Council after the adoption of the Resolution,

The authorized imports of Iraqi petroleum must produce a sum as determined on the basis of the evaluation of essential needs presented by Prince Sadruddin Aga Khan^[60].

Such conclusion was not shared by China's representative, Mr. Li Daoyu, who choose to have it both ways (mentioning the inadequacy of the "offer" in order to assuage Iraq and justifying its support of the resolution in order to assuage the major Western powers):

The amount of oil the resolution permits Iraq to export seems insufficient to meet the humanitarian needs of the Iraqi people. For that reason, the Security Council should review this question again at an appropriate time to consider increasing the permitted amount of oil sales and extending the time limit for those sales.

To what extent did SCR 706 (1991) meet the requirements of the Iraqi population as determined by the Aga Khan mission? As mentioned above, the mission of the Secretary-General estimated the most urgent needs to require approximately \$6.8 billion over a one-year period. SCR 706 (1991), on the other hand, would have yielded, after all deductions under its provisions (see *supra*), approximately \$848 million to cover all

humanitarian imports to Iraq for a period of six months, or about 1/8 of the amount proposed as an absolute minimum by the delegate of the Secretary-General. Translated into per capita terms, the proposal of the Council would have yielded an average of \$0.25 per inhabitant of Iraq per day for food, medicines and all other humanitarian goods[61]. The Council effectively proposed to the Iraqi people to subsist on a budget far below the threshold of “extreme poverty”[62], one dollar per day, set by the World Bank, a threshold denounced as inordinately low[63].

This blatant inadequacy was mildly criticized by the UN Secretary-General, who “advised the Council that an additional \$800 million was needed to meet Iraq’s [urgent] humanitarian needs. Iraqi UN Ambassador Abdul Amir Anbari reminded the Security Council of this recommendation on September 19, 1991, but to no avail.” [64]

In order to avail itself of this measly “humanitarian concession” by the Security Council, the Government of Iraq was to permit the control of Iraqi foreign trade by those who shortly before had devastated Iraq, allow U.N. personnel to monitor the distribution of goods within Iraq, pay to finance U.N. activities that were meant to restrict the sovereignty of Iraq and accept that 30 percent of Iraqi exports be siphoned off to a politically-established compensation regime [65].

Jean Drèze and Haris Gazdar, apparently puzzled by the humanitarian inadequacy of SCR 706/712 (1991), asked “why a narrow limit should be imposed on Iraq’s exports of oil, if - as specified in Resolution 706 - the proceeds from oil sales are earmarked for the provision of essential “humanitarian” needs under close UN supervision.” They argued that the “government of Iraq has a proven ability, and strong political incentives, to expand public provisioning on a large scale - not only in the domain of food rationing but also in those of health care, education, water supply, sewage, sanitation, and power supply, among others.” [66]

In order to understand the nature of SCR 706 (1991) it is crucial to note that it did not address the rehabilitation of the electrical system, essential for the operation of water-

61 From the theoretical allotment in resolution 706 (1991) of \$1.6 billion for a 6 months period, thirty percent would have been automatically deducted as war reparations to be transferred to the Compensation Fund [the percentage was set by the UN Secretary-General]. Allowing for other deductions, as implemented under the subsequent oil-for-food programme of 1995 (see *infra*), only 53% of the export proceeds would have accrued for the purchase of humanitarian goods destined to the population under the control of the Iraqi government. Calculating 53% of \$1.6 billion yields \$848 million. The daily per-capita amount is based on a population of 18.5 million people in Iraq. According to Clark’s calculations, Iraq would have had a slightly higher figure of \$1.04 billion for six months (Clark. *supra* note 5, p. 88).

62 UN Doc. No. E/CN.4/1999/48, Human rights and extreme poverty, report by Ms. Lizin, independent expert to the Commission on Human Rights, 29 January 1999, para. 49.

63 The methodology of the World Bank (or lack of it) to define the threshold of poverty has been severely criticized by Chossudovsky (1999). He writes that “if the US Bureau of Census methodology (based on the cost of meeting a minimum diet) were applied to the developing countries, the overwhelming majority of the population would be categorised as ‘poor’.” [Michel Chossudovsky. “Global Falsehoods: How the World Bank and the UNDP Distort the Figures on Global Poverty”, Transnational Foundation for Peace and Future Research] http://www.transnational.org/features/chossu_worldbank.html.

64 Clark, *supra* note 5, p. 88.

65 The decision to automatically deduct 30 per cent of Iraqi export proceeds was not a decision made on the base of a legal determination of fault, but a political decision made by belligerent states dictating the terms of the compensatory mechanism. The legitimacy of this procedure has been disputed for numerous reasons by legal practitioners.

66 “Hunger and Poverty in Iraq, 1991”, World Development, 20(7), pp. 921 - 45, 1992.

treatment facilities and the health system, nor the rehabilitation of the telecommunications system, so crucial for effective humanitarian work (as determined in the Ahtisaari report). According to the New York Times of 3 June, 1991, Iraq's most pressing problem - its destroyed electrical system - would require a "major infusion" of \$1.5 billion[67].

The amount that could have been raised by implementing SCR 706 (1991) was probably less than one percent of the funds needed by Iraq to rebuild facilities destroyed in the "Gulf war"[68]. The GOI refused to avail itself of, or comply with, SCR 706 (1991), contending that its provisions infringed on Iraqi sovereignty [69]. The resolution remained a dead letter.

2.6 Security Council Resolution 712 (1991)

Seeking again the cooperation of the GOI with a mechanism allowing funds to flow to the Compensation Fund, the Council adopted resolution 712(1991) [70] in which it expressed "its intention to review", presumably upwards, the monetary ceiling proposed to Iraq under Resolution 706, "on the basis of its ongoing assessment of the needs and requirements" of the Iraqi population. No assurance was given in the resolution or by delegates commenting on it, as to the time and scope of any future increase in the ceiling of Iraqi oil exports.

Commenting on the draft resolution, the Iraqi ambassador to the United Nations, Mr. Al-Anbari said:

A careful reading of resolution 706 (1991) and of this draft resolution shows that under them Iraq has two choices, one more bitter than the other. The first choice involves the maintenance of the state of full siege with all the concomitant suffering and starvation of the Iraqi people. The second involves a limited exception to the siege, for which Iraq would in return concede its sovereignty over its oil resources, and acceptance of the hegemony of some Security Council members, through United Nations bodies, over Iraq's oil resources and prevention of Iraq from developing and manufacturing those resources. What is worse is that the second choice in practice implies maintaining the economic boycott, without limit in contradiction with resolutions 661 (1990) and 687 (1991), and merely allowing the Iraqi people to obtain the minimum essential commodities to avoid starvation. [71]

He also referred to the recommendation of the Executive Delegate of the Secretary-General to increase the sum allowed for Iraqi exports from \$1600 million to \$2400 over a period of six months, a recommendation rejected by the Council. He concluded by "some Council members, even in emergency conditions, wish to maintain a suffocating grip on Iraq, indeed to control its fate." [72]

The Cuban delegate, Mr. Alarcon de Quesada explained during the debate preceding the vote why Cuba would oppose the draft resolution. In his comments he said:

67 Cited by Clark, *supra* note 5, p. 88.

68 See *supra* estimates of Iraqi damages caused by the allied bombings in the "Gulf war".

69 Thus, for example, Al-Anbari, Iraq's Ambassador to the United Nations dismissed already beforehand the French draft proposal of the resolution (Le Monde, 4-5 August 1991, p.5) by labelling it as "cynical" and "a declaration of permanent war against the Iraqi people".

70 It was adopted on 19 September 1991 by 13 concurring votes with Cuba opposing and Yemen abstaining.

71 UN Doc. S/PV.3008 of 19 September 1991.

72 *Ibid.*

In our opinion, the Council's approach involves a manipulation of humanitarian issues. It will mean a prolongation and strengthening of the sanctions imposed on Iraq in circumstances which, in our view, have long been unjustified. We also are witnessing an effort to disregard the principle of the sovereign equality of States, and in fact, the Council is acting in a way which goes beyond the attributes conferred upon it by the Charter. [73]

The GOI did not demonstrate any interest in cooperating with the UN in implementing the Resolution. Tariq Aziz, Iraq's deputy prime minister is reported to have said that Iraq is not a refugee camp; the GOI would be quite capable of feeding its 18.7 million inhabitants if only it were allowed to export oil in quantity [74]. As with Resolution 706, this one also remained a dead letter.

2.7 Security Council Resolution 778 (1992)

In October 1992, the U.N Security Council, reacting to Iraqi refusal to avail itself of the provisions of Resolutions 706 (1991) and 712 (1991), adopted Resolution 778 (1992). This resolution permitted each member state to "unfreeze" a maximum of \$200 million from proceeds of sales of Iraqi oil, paid after 6 August 1990, and transfer such funds to the UN escrow account. This ceiling was however subject to various qualifications that would inevitably and substantially reduce this amount, where member states would at all avail themselves of this non-mandatory resolution. The declared aim of this exercise was to generate funds to meet humanitarian needs in Iraq.

The net effect of this Resolution was described by Fox and Wickremasinghe:

As of 28 May 1993 a total of \$24 million had been received into the escrow account, half of this being a transfer of frozen assets from the United States and voluntary contributions from Saudi Arabia and Kuwait amounting to \$10.5 million and from Japan (\$2.4 million) [75].

2.8 The first FAO Nutritional Status Assessment Mission to Iraq, 1993

Under the auspices of the Food and Agricultural Organization of the United Nations (FAO), three missions visited Iraq in 1993 [76], 1995 [77] and 1997 [78]. Each mission comprised nutritionists, agriculturists and agricultural economists and their task was to assess the crop and food availability situation and to investigate the nutritional status of the population in light of the ongoing economic sanctions imposed by the Security

73 *Ibid.* The U.S. delegate, Mr. Pickering, confirmed during the debate that this "limited authorization of the sale of Iraqi oil is being made within the existing sanctions regime, which remains firmly in place. It does not in any way represent a weakening of sanctions."

74 The Lancet, 9 Nov. 1991, pp 1179-1180.

75 Hazel Fox and C. Wickremasinghe, *UK Implementation of Economic Sanctions*, 42 International and Comparative Law Quarterly (1993), pp. 950-1. According to Cortright, *supra* note 52, "approximately \$100 million was later deposited in the escrow account, but most of this came from voluntary contributions by Saudi Arabia and Kuwait and from the transfer of \$50 million in frozen Iraqi assets from the United States." (p.49).

76 See FAO, The Nutritional Status Assessment Mission to Iraq. Technical Cooperation Program (November 1993), Doc. Nr. TCP/IRQ/2356e.

77 See FAO, Evaluation of the Food and Nutrition Situation in Iraq. Technical Cooperation Program (1995), Doc. Nr. TCP/IRQ/4552.

78 See WFP, FAO/WFP Food Supply And Nutrition Assessment Mission to Iraq (1997), 3 October 1997.

Council. All three missions reports demonstrated decline in food availability, significant increase in malnutrition and a severe deterioration in public health.

In its report, the first mission (1993) noted

with deep concern the prevalence of the commonly recognized pre-famine indicators such as exorbitant prices, collapse of private incomes, soaring unemployment, drastically reduced food intakes, large scale depletion of personal assets, high morbidity levels, escalating crime rates and rapidly increasing numbers of destitute people...[L]arge numbers of Iraqis have now food intakes lower than those of the populations in the disaster stricken African countries[79].

The mission identified the UN sanctions as the main “cause” for the “persistent deprivation, severe hunger and malnutrition for a vast majority of the Iraqi population, particularly the vulnerable groups - children under five, expectant/nursing women, widows, orphans, the sick, the elderly and disabled.”[80]

On the base of its findings, the mission concluded that “it would be impossible to continue the sanctions in their present form, without further aggravating the already grave food supply situation in Iraq. The lasting solution to the current food crisis would lie in the regeneration of the Iraqi economy which cannot be achieved without a resumption of international trade by the country.”[81]

As with former reports by humanitarian missions to Iraq, the Security Council did not take any action in response to the findings and recommendations of the 1993 FAO mission to Iraq.

2.9 The 1995 Non-paper by the Permanent Members of the Security Council

On 13 April 1995, the five permanent members of the Security Council (hereafter the “P-5”) sent to the President of the Security Council a non-paper entitled “Humanitarian impact of sanctions” [82]. In this non-paper, the P-5 suggest that

future sanctions regime should be directed to minimize unintended adverse side-effects of sanctions on the most vulnerable segments of targeted countries.

No specific reason is given for the drafting of this unusual and sloppily worded document. One can only surmise that it was written because the P-5 had recognized the embarrassment from the horrendous consequences of the sanctions on Iraq and the need to appear concerned.

The document is interesting because by declaring that sanctions could have “side effects” which the Council should “minimize”, the P-5 effectively recognized (a) a causal relation between economic sanctions and the humanitarian situation in sanctioned countries, (b) the duty of the Council to “minimize” the adverse effects of economic sanctions, and by implication (c) the past failure of the Council to adequately “minimize unintended adverse side-effects”.

79 FAO, *supra* note 76.

80 *Ibid.*

81 *Ibid.*

82 UN Document No. S/1995/300 of 13 April 1995 and Annex. The signatories of this document were: LI Zhaoxing (China), Jean-Bernard MERIMEE (France), Sergey V. LAVROV (Russian Federation), David HANNAY (U.K.) and Madeleine Korbelt ALBRIGHT (U.S.).

In their above formulation, the P-5 limited their self-perceived duty of care to that of *minimizing*, not avoiding, adverse consequences of sanctions to civilians. They further restricted this duty of care to the “most vulnerable segments” of the targeted population, implying a *contrario* that the Security Council would not owe any duty of care to civilians it does not regard as the “most vulnerable”.

3 THE “OIL-FOR-FOOD” PERIOD

Until 1994-5 the GOI managed to prevent the emergence of famine in Iraq by a judicious application of rationing and incentives to farmers for increasing food production. But the GOI slowly exhausted the foreign resources it still possessed and could access. The Security Council also had to face mounting criticism because of the growing humanitarian disaster in Iraq caused by the sanctions. The high levels of malnutrition reported by the FAO (1995) mission to Iraq[83], widely publicized[84], was considered an “important catalyst” [85] for the establishment of the “oil-for-food” programme. These compound factors led the Council to resuscitate its rejected proposals from 1991. The result was the adoption of SCR 986 (1995) which paved the way for the initiation of the “oil-for-food” programme.

3.1 Security Council Resolution 986 (1995)

Reciting once more its concern for the deteriorating humanitarian situation in Iraq, the UN Security Council adopted Resolution 986 (1995), establishing the so-called “oil-for-food” programme.

This programme’s salient features were the following:

(a) Iraq was to be entitled to export oil, subject to detailed scrutiny of the Sanctions Committee, for a gross ceiling of \$2 billion for each renewable six-month period, the proceeds of which were to be paid by the buyer directly into a UN-managed escrow account (see SC Resolution 706 (1991)).

(b) The U.N. Secretary-General was to be allowed to disburse from the escrow account approximately 53% of the proceeds of Iraqi oil sales, for the purchase of goods to be delivered to Iraq, as specified and allowed by the Resolution. Thirteen per cent of the proceeds were to be allocated for the purchase of humanitarian goods destined for the Kurdish areas outside the control of the Baghdad government. Thirty percent were to be automatically transferred to the Compensation Fund. The rest of the funds were to be used to finance UN activities that the Security Council had imposed on Iraq.

(c) The distribution within Iraq of humanitarian goods was to be monitored by UN personnel[86].

The terms of SC Resolution 986 (1995) echoed those of SC Resolutions 706 (1991) and 712 (1991) that were never carried out, except that the amount was slightly increased

83 FAO, *supra* note 77.

84 *Inter alia* by Ramsey Clark and the International Action Center (New York) in the book “The Children are Dying” (New York, International Action Center and International Relief Association, 1998).

85 FAO, Assessment of the Food and Nutrition: Iraq (2000), Doc. Nr. TCP/IRQ/8924.

86 In the three autonomous northern governorates (Kurdish areas), the OFF programme was to be administered by the World Food Programme (WFP) but funded by Iraqi government oil revenues.

(from a gross ceiling of \$1.6 to \$2.0 billion for a period of six months) and the six-months periods were renewable. As the situation in Iraq had deteriorated, the Government of Iraq finally, but grudgingly, acceded to these conditions. It took over one year of negotiations for the GOI and the UN to agree on the modalities of the “oil-for-food programme” (hereafter “OFF”), with the U.S. Administration and the GOI blaming each other for the delay. On 20 May 1996, the Memorandum of Understanding (MOU) between the U.N. Secretariat and the GOI on the implementation of SCR 986 (1995) was concluded[87]. Subsequently, on 8 August 1996, the Sanctions Committee adopted the Procedures to be employed by it in the discharge of its responsibilities as required by paragraph 12 of SCR 986 (1995)[88].

While the terms of the OFF programme addressed the import of goods, it did not address the cash needs of the GOI. The GOI, like any other government, needs cash revenues to fund its various social programmes, pay for labour to maintain public facilities, pay teachers, nurses, doctors, policemen, judges, various administrative personnel, etc. Despite repeated appeals by UN and humanitarian agencies to allow the GOI access to some cash raised by Iraqi oil exports, the Security Council did not heed these appeals until it adopted SCR 1284 (1999)[89]. The United States and the U.K. continued to spearhead efforts to limit the scope of a “cash component”[90].

Periodic assessments of the performance of the OFF were made by the Secretary General of the United Nations, subsequent to the relevant provisions of the resolutions of the Security Council. [91] These reports provided the Secretary-General’s assessment of the humanitarian situation in Iraq and the effectiveness and adequacy of the programme [92]. In 1999, the Security Council, for the first time, mandated a comprehensive assessment of the humanitarian situation in Iraq and established a Humanitarian Panel to carry out this assessment.

87 UN Doc. S/1996/356.

88 UN Doc. S/1996/636.

89 Pursuant to paragraph 24 of SCR 1284(1999), the Secretary-General was asked to draw up plans for the purchase of Iraqi goods, including a cash component.

90 According to a news release by Reuters of 5 December 2000, a draft resolution to the Security Council “contains a ‘cash component’ of up to 600 million euros, the equivalent of about \$525 million Baghdad wants to pay its oil workers. But the United States and Britain want the funds used for humanitarian goods as well as oil production funds....Another issue of contention is whether Iraq can use some of its oil revenues now deposited in a U.N. escrow account, to pay the \$15 million arrears it owes the United Nations. The United States and Britain oppose this.”

91 UN Doc. S/1997/206 of 10 March 1997; S/1997/419 of 2 June 1997; S/1997/685 of 4 September 1997; S/1997/935 of 28 November 1997; S/1998/90 of 1 February 1998; S/1998/194 of 4 March 1998; S/1998/477 of 5 June 1998; S/1998/1100 of 19 November 1998; S/1998/843 of 20 November 1998; S/1999/187 of 25 February 1999; S/1999/573 of 18 May 1999; S/1999/896 of 22 August 1999; S/1999/1162 of 17 November 1999; S/2000/22 of 14 January 2000; S/2000/208 of 10 March 2000; S/2000/520 of 1 June 2000; S/2000/857 of 8 September 2000; S/2000/1132 of 29 November 2000; S/2001/186 & S/2001/186/Corr.1 of 2 March 2001; S/2001/505 of 18 May 2001.

92 According to reports by UN officials - formerly or currently speaking under the condition of anonymity - field reports from UN personnel in Iraq were often censored by the Office of the Secretary-General, with the aim of down-playing the gravity of the humanitarian situation and remove any discussion of the human rights of the Iraqi people, such as the right to nutritional food.

3.2 Security Council Resolution 1153 (1998)

On 20 February 1998 the SC adopted SCR 1153. The resolution was a response to a proposal made shortly before by the UN Secretary-General to enhance the food basket [available to the Iraqi population under the government rationing system] with additional calories and animal proteins, and proposing that the ceiling of \$2 billion in oil sales every six months, which had proven inadequate to meet the needs of the Iraqi population, be raised to \$5.2 billion gross (\$3.4 billion for the humanitarian allocation).

Cortright notes however:

When Resolution 1153 was passed, Iraqi officials and independent experts pointed out that the country was incapable of pumping enough oil to meet the higher revenue target because of disrepair and a lack of spare parts in the oil industry. Low oil prices in the world market also hampered Iraq's ability to generate sufficient revenue. In response to these concerns, the Security Council adopted Resolution 1210 in November 1999 [that is one-and-half years later], authorizing the purchase of spare parts and pumping equipment for the oil industry as part of the humanitarian relief program. [93]

3.3 Security Council Resolution 1284 (1999)

After lengthy discussions the Security Council adopted on 17 December 1999, by a vote of 11 with 4 abstentions [94], resolution 1284, which attempted to re-establish a weapons monitoring system on Iraq and link the suspension of economic sanctions to the full compliance by Iraq with such monitoring. The resolution continued thus to link the quality of life for the Iraqi civilian population with the complex technical, procedural and political questions of weapons monitoring. This link was revealed by para. 33 of the resolution in which the Council

[e]xpresses its intention to, upon receipt of reports from...UNMOVIC and from...IAEA...to suspend with the fundamental objective of improving the humanitarian situation in Iraq...prohibitions against the import of commodities and products originating in Iraq, and prohibitions against the sale, supply and delivery to Iraq of civilians commodities and products...[95]

This link can also be expressed by its negative mode, namely that the Council would only suspend the sanctions (necessary to improve the humanitarian situation of the civilian population) if the GOI would cooperate with the UNMOVIC to the full satisfaction of each permanent member of the Security Council[96].

While the resolution lifted the ceiling on Iraqi oil sales (para. 15), all Iraqi revenue was still to be paid into the UN-managed escrow account to which the GOI has no access and imports to Iraq continue to be subject to approval by the Sanctions Committee.

Hubert Vedrine, France's Minister for Foreign Affairs, explaining France's abstention in the vote on Resolution 1284, noted, "[W]e think [the resolution] may give rise to an

93 Cortright, *supra* note 52 , p. 50.

94 The three permanent members France, Russia and China, as well as Malaysia.

95 SCR 1284 (1999) of 17 December 1999.

96 Any single permanent member could, by claiming dissatisfaction, veto the suspension of sanctions.

interpretation allowing some countries to keep on forever saying that the cooperation hasn't taken place and that, consequently, the embargo can't be suspended." [97]

This view was shared by the Malaysian Ambassador to the UN, Hasmy Agam, who participated in the debate preceding the adoption of the resolution. He considered the resolution "unclear and vague about triggering the suspension of sanctions. Nor did it establish a definite benchmark on a time-frame for the final lifting of sanctions. There should be an element of certainty and predictability in the renewals of the suspensions based on the positive reports of the new Commission. Nine years of punitive sanctions was too long." He regretted that his proposal to hear Iraq's views before taking action on the text had not been accommodated. "Engaging Iraq, rather than demonizing it, would serve the best interests of all." [98]

France's Ambassador to the UN, Alain Dejammet, observed that "there seemed to be a refusal to end the isolation of the Iraqi people. The resolution did not allow the resumption of aviation traffic and did not provide any real exemption for religious purposes, since that was dependent on the Sanctions Committee. Sanctions were striking at the people of Iraq, and the Council could not abandon its responsibility in the face of that humanitarian disaster." [99]

Sergey Lavrov, the Russian Federation's Ambassador to the UN, "reiterated that no concrete proof had been submitted to the Council of an Iraqi threat" that warranted the maintenance of the sanctions and regretted that the Council did not incorporate "the [humanitarian] panel's conclusions..." by "those who wanted to attain their unilateral goals", presumably the United States and the United Kingdom[100].

The United States' Ambassador to the UN, Peter Burleigh, expressed his appreciation that "no member had asserted that Iraq had met its obligations under the Council's resolutions" and warned that "[h]e expected all members of the Council, regardless of their vote, to join in pressing Iraq for full and immediate implementation." He defended the maintenance of the air embargo, and the ensuing isolation of the Iraqi population by claiming that its relaxation "would greatly complicate the task of sanctions enforcement." [101] As for the suspension and lifting of the sanctions, he said "if [the Government of] Iraq fulfilled its key remaining obligations, the Council *could decide whether* to recognize that cooperation and compliance by suspending sanctions. Similarly, if [the Government of] Iraq met the full range of obligations mandated in the Council's resolutions, the Council *could make a decision* regarding the lifting of sanctions." (emphasis added), leaving ultimately the fate of suspension and lifting to the will of the veto-wielding United States.

4 ASSESSMENT

4.1 Sanctions' overall effects on the Iraqi economy

The economic sanctions had a traumatic effect on the Iraqi economy. According to the Energy Information Administration (EIA) of the U.S. Department of Energy, the Gross

97 Edith M. Lederer, "UN Votes to Return Iraq Monitors", Associated Press, December 18, 1999.

98 Press release, UN Doc. SC/6775 of 17 December 1999, "Security Council establishes new monitoring commission for Iraq adopting resolution 1284 (1999) by vote 11-0-4".

99 Id.

100 Id.

101 Id.

Domestic Product of Iraq in the year 2000 is estimated at \$15.4 billion, “around one-third of 1989’s economic output”. Per-capita income in Iraq was estimated by the EIA at around \$653[102]. Iraqi exports prior to the imposition of the sanctions generated export earnings of \$18.0 [103] to \$19.0 billion [104] a year, which provided 95 percent of the funds for the national budget and 64 percent of the country’s gross domestic product [105]. Iraq’s legal foreign trade was cut by an estimated 90 per cent by the initial sanctions[106].

The extent by which the Iraqi economy was already hurt before the “Gulf war” can be gauged by comments made in the U.S. Senate on 10 January 1991. In his address, Senator Pell said:

As a result of the U.N. sanctions, Iraq can sell no oil. It can perform no financial transactions. Iraq’s gross national product has fallen between 40 and 50 percent in just 4 months. There is also in place a virtually total ban on imports. Without spare parts, imported inputs, and foreign technicians, Iraq cannot operate most of the expensive infrastructure that it purchased in the oil boom years of the 1960’s and 1970’s. Iraq cannot manufacture tires for its transport. [107]

It is possible to divide the sanctions period into three phases: In the first phase, initiated by SCR 661 (1990) and ending with SCR 687 (1991), Iraq was placed under a total trade ban, which included an effective ban on food purchases. In the second phase, ending with the initiation of the OFF programme (under SCR 986 (1995)), the Security Council delegated to the Sanctions Committee wide discretionary powers to permit Iraqi trade for humanitarian purposes. As Iraq had no funds with which to import humanitarian goods, the Sanctions Committee apparently issued a great number of humanitarian waivers that had no practical value. The third phase, triggered by SCR 986 (1995), the OFF-phase, was characterized by a slight shift in policy. The underlying concept was to set up a mechanism that would provide minimal relief to the Iraqi population, prevent outright starvation and ensure the flow of Iraqi funds to war reparations. As Iraq was allowed to sell more oil, the United States, flanked by some of its allies, increasingly resorted to “holds” within the Sanctions Committee that effectively negated the right of Iraq to export greater quantities of oil products.

4.2 The purpose of the “oil-for-food” programme

According to Denis Halliday, former U.N. Humanitarian Coordinator for Iraq in 1998, who resigned after a long U.N. career in protest against the sanctions, the “oil-for-food” was

designed to be inadequate. It was designed to stop further deterioration of the situation. At the time, the situation was high child mortality, massive malnutrition,

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- 102 <http://www.eia.doe.gov/emeu/cabs/iraqfull.html>. Information as per September 2000; according to the Economist Intelligence Unit (“Iraq, Country Profile 1997-98”, London, 1997, p. 27) GDP per capita sunk from \$2610 in 1989 to \$880 in 1996.
 - 103 William Webster, CIA Director at Senate Hearings, Congressional Record Page S14080-S14081, 5 November 1999 (Senate).
 - 104 Richard Garfield, *Morbidity and Mortality Among Iraqi Children from 1990 Through 1998: Assessing the Impact of the Gulf War and Economic Sanctions*, CASI.Internet Version, July 1999: <http://fourthfreedom.org/sanctions/garfield.html>.
 - 105 Id.
 - 106 Id.
 - 107 Congressional Record, Senate - 10 January 1991, page S125.

social collapse and so on. So if it was designed to stop further deterioration, it was designed also to sustain the situation that already existed[108].

The declared purpose of the OFF programme was not to *reverse* the humanitarian degradation in Iraq, but merely to *prevent further degradation*, secure a steady flow of funds into the Compensation Fund and permit the U.S. - through the mechanism of the Sanctions Committee - to exercise control over the Iraqi economy. Richard Garfield likens the status of the Iraqi government to that of “a domestic governor under an external sovereignty: it’s an occupied country where nationals continue to manage civil administration but an international force controls everything else.” [109]

The above reading of the OFF programme is corroborated by the UN Secretary-General, who stated that the OFF was neither a “developmental” programme nor ever “intended to meet all the humanitarian needs of the Iraqi people”[110]. Senior UN officials admitted that the OFF “was never meant to... meet all the humanitarian needs of the Iraqi people, nor can it restore Iraq’s economic and social infrastructure to pre-1990 levels.” [111] Until the adoption of SCR 1210 on 24 November 1998, the Security Council’s purpose with the programme was to “avoid any further deterioration” [112] of the humanitarian situation in Iraq, in other words “to sustain the situation that already existed” [113] or in blunter terms “to maintain the sufferings of the Iraqi population at a steady level”. Only from 1999 on, did the Council formally decide “to improve” the humanitarian situation in Iraq[114], although it took a further two years for some improvement to be noticeable.

Hans von Sponeck, who succeeded Denis Halliday as UN humanitarian coordinator for Iraq, and who equally resigned in protest against the sanctions, considered the OFF programme as “valuable but inadequate” and compared what it yielded (\$252 per capita each year) with the pre-sanctions GDP per capita of \$3,100, itself only a fraction of Western standards[115]. He stated in an interview that the OFF was not enough to “guarantee the minimum of that a human being requires which is clearly defined in the universal declaration of human rights[116].

According to the March 1999 report by the Humanitarian Panel established by the Security Council, the OFF program “played an important role in averting major food shortages and to a considerable extent has helped to alleviate the health situation, particularly in the North”[117]. But the experts’ report also observed that the program “has not been able to achieve fully its objectives”, and even if fully implemented could

108 Quoted by Matthew H. Brown, writing in the Hartford Courant (CT), 22 October 2000.

109 Richard Garfield, “Changes in health and well-being in Iraq during the 1990s: What do we know? how do we know it?”, in CASI (2000), p.39.

110 S/1998/90.

111 UN Doc. No. S/1999/481, 28 April 1999, p. 25-6.

112 See, for example, the Preamble of Security Council Resolution 1158 (1998) of 25 March 1998 and numerous reports by the UN Secretary General to the Security Council concerning the OFF programme.

113 Denis Halliday, cited by Matthew Hay Brown, “A Society Savaged” in The Hartford Courant, 22 October 2000.

114 Preambular paragraph 6 of SCR 1284 (1999).

115 Maher Chmaytelli, “UN aid chief warns sanctions creating ‘lost generation’ in Iraq, AFP, 27 March 2000.

116 Reuters, “Top UN Official Urges End to Iraq Trade Sanctions”, 8 Feb. 2000.

117 Annex II of Doc. No. S/1999/356, of 30 March 1999, para. 29.

“only meet but a small fraction of the priority needs of the Iraqi people”[118]. The UN Secretary General also noted that the “overall health situation has not improved” and the “magnitude of the humanitarian needs is such that they cannot be met within the parameters” of the “relief” operation [119]. In a report to the Security Council he stated that the OFF was neither a “developmental” programme nor ever “intended to meet all the humanitarian needs of the Iraqi people”[120].

This conclusion was shared by the ICRC:

As the ICRC stated in 1991, and reiterated in March 1999 in a "non-paper" transmitted to the UN panel set up to review humanitarian issues in Iraq, aid can be no substitute for a country's entire economy. It can never meet all the basic needs of 22 million people nor ensure the maintenance of a whole country's collapsing infrastructure.“ [121]

A former official of FAO in Iraq, Dr. El-Bayoumi, reveals that disagreements emerged among UN staff whether the OFF programme was meant to merely prevent further deterioration or to actually improve the circumstances resulting from war and several years of sanctions[122]. UN humanitarian personnel in Iraq formulated their recommendations on the base of the latter understanding while the U.S. and some UN officials sought to maintain the destitution of the Iraqi population at a steady level, possibly as a means of coercion. The pressures on U.N. field personnel were reflected in alleged attempts by senior UN officials from New York to “tune down” the humanitarian recommendations from U.N. personnel stationed in Iraq. These attempts were described by Dr. El-Bayouni:

A high UN official came to Baghdad after the preliminary report was sent to New York. He clearly attempted to pressure the UN staff in Iraq to modify the report. At that time the U.S. was strongly objecting to any increase in the amount of permitted oil sales. In a meeting of the heads of the UN agencies in Baghdad the UN official from New York failed to change their recommendations, which were based on concrete evidence. At this point I made it clear to the UN New York official as well as to the Humanitarian Coordinator, that I would resign and expose the truth if our findings are modified and our recommendations deleted from the report. This report would eventually be submitted by the UN Secretary General for action by the Security Council. These developments may give some indication of the dynamics and the working of the OFFP, and point to the reality of power politics within the UN itself, including its humanitarian programmes.[123]

A blunt critique of the OFF programme is provided by former UN official in Baghdad Michel Joli:

The oil-for-food programme is a surveillance device devoid of any humanitarian considerations, and the international officials recruited to implement it have been misled as to its real aims. The UN’s humanitarian personnel in Iraq are there to

118 Id., para. 46.

119 Review and Assessment, UN Doc. No. S/1999/481, paras. 80 and 116.

120 UN Doc. S/1998/90.

121 Report by ICRC: Iraq: A decade of sanctions, ICRC activities on behalf of Iraqi civilians, 1999-2000. 14 March 2000. <http://www.reliefweb.int>

122 M. Ashraf El-Bayoumi, *Sanctions, Strikes, and Oil for Food: Humanitarianism and the "New" World Order*, 15 AAUG Monitor [AAUG Association of Arab-American University Graduates] (2000), <http://www.geocities.com/iraqinfo/index.html?page=/iraqinfo/sanctions/sarticles4/nwo.html>.

123 Id.

maintain the status quo and to ensure that the international community does not have a guilty conscience about maintaining an iniquitous embargo. [124]

In the conclusions of a report placed before the Security Council on 31 March 2000, the Secretary-General provided some figures regarding the adequacy of the [oil-for-food] programme in addressing the humanitarian needs of the Iraqi population: “As at 31 January [2000], the total value of the supplies delivered to Iraq [under the OFF programme] was \$6.7 billion.” This amount covers the time between 19 March 1998, when the first shipment of food and medicines under the OFF programme arrived in Iraq and March 2000, a period of 2 years. The inadequacy of this programme can be gauged by comparing the yielded amount (an average of \$3.35 billion per year) with the \$6.8 billion per year recommended nine years earlier as an absolute minimum by the Aga Khan mission (see *supra*).

If Iraqi foreign trade was initially reduced to 10 percent of their pre-sanctions level, the OFF programme merely increased that percentage to less than 20 percent [125] or less than 50 percent of the minimal and urgent recommendations made in 1991 by the Aga Khan mission (see *supra*). This comparison does not take into account inflation over the years nor the costs of repairing infrastructure facilities that were grossly dilapidated through lack of maintenance.

4.3 U.S./U.K. continued control of Iraqi foreign trade

As pressure increased by various members of the Security Council and by world public opinion to lift the cap on Iraqi oil exports, SCR 1284 (1999) theoretically ended the ban on Iraqi oil exports[126]. In order to maintain the pressure on Iraq, the United States simply placed more items on “hold” within the Sanctions Committee, thus defeating the impact of increased fund availability[127]. The U.S. and the U.K. have been using their prerogatives within the Sanctions Committee (the ability to block any item) as a means to prevent the normalisation of Iraq’s economic life. The GOI indeed increased its oil exports but it could not fully use the revenue from these exports due to holds placed by the U.S. and the U.K.. Iraqi money began accumulating in the UN-managed escrow account to which the GOI had no access, as evidenced below. The mechanism secured continued cash flow into the Compensation Fund and entrenched the institutionalization of a system of UN-oversight over the economy of a UN member state[128].

124 Michel Joli, writing in MGW (Manchester Guardian Weekly) 160(4) 16, 1999.

125 \$3.35 billion out of the pre-sanctions exports of \$18.0-19.0 billion.

126 Hans von Sponeck, former UN humanitarian coordinator in Iraq, as well as Jutta Burghardt, the UN World Food Programme chief in Baghdad, who also resigned in protest against the sanctions, considered SCR 1284 (1999) as “unworkable” because it was not based on an agreement with the GOI (AFP news, 16 February 2000). France, Russia and China abstained in the vote on SCR 1284 (1999) because the wording did not describe “in completely good faith” the procedure for suspending the sanctions but Iraq refused to cooperate on the implementation of this resolution (see Sophie Boukhari, UNESCO Courier, 26 July 2000).

127 According to an Associate Press release of 27 January 2000 “the United States leads all 15 nations on the Security Council in placing contracts for supplies on hold, currently blocking \$1.3 billion worth of contracts.” The workings of the Sanctions Committee, including the system of “holds”, is described in a detailed study by Paul Conlon, former deputy-secretary of the Sanctions Committee, *supra* note 5.

128 The extent of the involvement by UN bodies in determining the needs of all sectors of Iraq’s economic and social life and usurping the legitimate functions of the GOI, can be gauged by studying the reports of the Office of the Iraq Programme (<http://www.un.org/Depts/oip/chron.html>), such as the Distribution Plans of the various OFF Phases.

An estimate of the value of humanitarian goods ultimately shipped to Iraq was provided by Issam Rashid Hwaish, Governor of the Bank of Iraq, at the Joint Annual Discussion of the IMF/WB on September 26-28, 2000:

In accordance with [the OFF] program, Iraq has exported oil valued at \$32.9 billion, of which the United Nations has received \$10.1 [billion] [129], while \$10.2 [billion] remains on [the Escrow] account as at August 31, 2000. The value of food and humanitarian goods reaching Iraq has not exceeded \$12.6 billion over a period of five years, or an average of \$2.5 billion per year[130].

The issue of holds was felt to be sufficiently serious to warrant a letter by the Secretary-General to the President of the Security Council[131]. The letter noted that the number of contracts on “hold” had increased, as had the length of time taken to address the reasons for the holds. Items for telecommunications (100%), electricity (65.5%), water and sanitation (53.4%) and spare parts and equipment for the oil sector (43%) were the most likely to be put on hold. These were the same sectors that were heavily bombed by the allied forces in the “Gulf war”. As of 14 March 2001, the total value of applications to the Sanctions Committee put on “hold” was \$3.3 billion, overwhelmingly by the U.S. and the U.K. [132].

The use of bureaucratic hurdles by authorities is a known method of deflecting charges of bad faith or of discriminatory intent [133]. In the case of the Sanctions Committee, a State placing items on “hold” would claim that it required a great deal of time to examine these items for their military potential. Due to the opaque nature of the administrative procedure, an external observer is prevented from determining whether the claim is reasonable.

It is appropriate to end this account by quoting two independent sources who summarize ten years of Iraq sanctions.

On 8 April 2000, The Economist (London) addressed the crisis in Iraq in an editorial entitled, 'All wrong in Iraq', observing: "Slowly, inexorably, a generation is being crushed in Iraq. Thousands are dying, thousands more are leading stunted lives, and storing up bitter hatred for the future."

On 18 August 2000, Prof. Marc Bossuyt of Belgium, presented to the U.N. Sub-Commission on the Promotion and Protection of Human Rights a report it had previously commissioned from him, on the question of the effect of economic sanctions

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- 129** The bulk of this amount was transferred to the UN Compensation Fund.
 - 130** The GOI says it has exported the equivalent of \$47 billion of crude oil under the [OFF] deal but received only \$12 billion worth of goods (Reuters news release of 4 September 2001): “16 billion earned by Iraq in oil sales went as reparations for the Gulf War. Another \$19 billion worth of contracts that it tried to negotiate for goods and food were rejected or frozen by the U.N. sanctions committee in New York.”
 - 131** UN Doc. No. S/1999/1086 of 23 October 1999. Commenting on that letter, Colum Lynch wrote in the Washington Post (25 October 1999): “...Kofi Annan accused the United States of using its muscle on a U.N. sanctions committee to put indefinite ‘holds’ on more than \$500 million in humanitarian goods that Iraq would like to buy”.
 - 132** Based on the OIP Website <http://www.un.org/Depts/oip/latest/BVChart.xls> (cited by Nathanael Hurd).
 - 133** Typical methods of preventing citizens from travelling abroad without appearing to violate their rights to free travel, is to place almost insurmountable bureaucratic hurdles or demanding extremely high fees for a passport. Such methods have been and continue to be used by many governments, including that of Iraq.

on human rights^[134]. With regard to the Iraq sanctions, he wrote that the sanctions had “condemned an innocent people to hunger, disease, ignorance and even death.” The Sub-Commission subsequently urged “all States concerned to seek prompt termination of all aspects of sanctions regimes that adversely affect human rights, that contravene international law or that conflict with other norms of international law.”

END

134 U.N. Committee on Human Rights, The adverse consequences of economic sanctions on the enjoyment of human rights (2000), 21 June 2000, UN Doc. E/CN.4/Sub.2/2000/33