

UNSANCTIONED SUFFERING
A HUMAN RIGHTS ASSESSMENT OF
UNITED NATIONS SANCTIONS ON IRAQ

Center for Economic and Social Rights
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EXECUTIVE SUMMARY

The Impact of Sanctions

Six years of the most severe Security Council sanctions in history have not loosened the control of Saddam Hussein's government, but have had a devastating impact on the most vulnerable sectors of Iraqi society, especially children. According to studies by UN agencies, child mortality rates have risen five-fold due to malnutrition and disease since sanctions were imposed in 1990, leading to the excess deaths of over 500,000 children under the age of five. In simple terms, more Iraqi children have died as a result of sanctions than the combined toll of two atomic bombs on Japan and the recent scourge of ethnic cleansing in former Yugoslavia.

Yet these studies have generally remained within UN and development circles, with no discernible impact on the Security Council's sanctions policy. In general, there has been an astonishing lack of public debate over the UN's participation in this massive violation of human rights, and particularly child rights. As UN Secretary-General Boutros Boutros Ghali pointed out in 1995, the international community has still failed to confront "the ethical question of whether suffering inflicted on vulnerable groups in the target country is a legitimate means of exerting pressure on political leaders whose behavior is unlikely to be affected by the plight of their subjects." This silence is especially troubling in light of the post-Cold War Security Council's frequent and uncritical use of sanctions as the preferred means to pressure states and maintain international peace and security.

CESR Mission to Iraq

On April 2-19 and May 3-13, 1996, the Center for Economic and Social Rights (CESR, formerly known as the Harvard Study Team) visited Iraq with a team of 24 doctors, public health experts, economists, lawyers and health surveyors from 8 countries. The team was accompanied by a camera crew from the CBS news program *60 Minutes* and a correspondent from *The Guardian* newspaper. The objectives of the CESR mission were to conduct scientific surveys of the effect of sanctions on the civilian population in Iraq, and to assess the legality of Security Council sanctions on Iraq.

This report raises legal and ethical questions about a sanctions regime imposing such terrible costs on a population which has no voice in the policies of either its own government or the international community. The report is divided into four sections. Chapter One summarizes previous studies by the UN and independent groups to provide a factual background of the effects of sanctions on Iraqi civilians. Chapter Two sets forth the main findings of the CESR mission in two research areas: an economics survey and a health survey. Chapter Three assesses the legality of sanctions under the UN Charter and accepted principles of human rights and humanitarian law. The final section offers a set of policy recommendations to ensure that the sanctions do not continue to violate the rights of the civilians in Iraq.

Main Findings of Report

Prior to sanctions, oil revenues accounted for over 90% of Iraq's foreign earnings. These funds were used to import food, medicine, and equipment for the country's modern health infrastructure. Without oil or hard currency, Iraq's economy has collapsed. Runaway inflation has caused the average public-sector wage to fall to less than \$5 per month, enough to purchase several meals for a family. Skilled workers such as doctors and engineers desert their jobs because it is more profitable to sell cigarettes on the street. Families must sell off household and personal possessions to buy food. Ordinary Iraqis now depend for their very survival on the government rationing system, which, while found to be efficient and equitable, only provides one-third of caloric needs.

Meanwhile, Iraq's formerly modern health infrastructure is crippled due to a lack of supplies and spare parts. Water and sewage networks have ceased to function, so people must drink contaminated water and live amidst raw sewage, creating a deadly cycle of water-borne disease. Sick and starving children fill hospital wards in a country where child obesity used to be a common problem. Because hospitals lack basic medicines and supplies, doctors are forced to play God on a daily basis, deciding who must die and who will get a chance to live.

2 Executive Summary

The Security Council is obligated by the UN Charter to “promote and encourage respect for human rights.” Saddam Hussein’s crimes do not give the Council license to violate the human rights of 21 million Iraqis through a devastating, even if unintended, form of collective punishment. The fundamental premise of the entire human rights regime is the need to respect the inherent dignity of every individual. Even in times of war, international law requires states to distinguish between military and civilian targets at all times, and not to inflict disproportionate damage on the civilian population. If the Security Council cannot conduct a war that kills hundreds of thousands of children for indeterminate political gains, why is it allowed to impose sanctions that have the same result? Are deaths from hunger and disease more humane than deaths from bullets and bombs?

Food-For-Oil Deal

On May 20 1996, the United Nations Secretariat and the government of Iraq signed a Memorandum of Understanding allowing Iraq to sell a limited amount of oil and use the proceeds to buy humanitarian supplies for the population. While the deal is a positive step away from six years of political deadlock, it will only lessen rather than end civilian suffering in Iraq due to sanctions.

The details are as follows: Iraq is permitted to sell \$1 billion of oil over a 90 day (renewable) period in order to buy humanitarian supplies. All proceeds from such sales will be placed in a UN-controlled bank account, to which Iraq has no access. Of the \$4 billion in revenues generated over one year, 30% will go towards reparations for the Gulf War, 5-10% will pay for UN operations in Iraq, 5-10% will cover repair and maintenance of the oil pipelines, and 15% will go towards humanitarian supplies for 3 million Kurds in northern Iraq. That leaves about \$1.6 billion for Iraq’s remaining population of 18 million, or approximately \$7.50 per person every month.

However, the UN Secretariat and UN agencies have estimated that Iraq requires almost \$4 billion per year in food and medicine alone – more than twice the amount allocated to humanitarian needs under the food-for-oil deal. This does not even begin to account for the massive capital expenditure needed to revive the economy in order to restore employment and wages, or rebuild the health infrastructure (especially water and sewage plants) in order to stop the cycle of disease. In 1991, the UN Secretary-General estimated that restoring these systems would cost \$22 billion. Thus, children will continue to die from hunger and disease in Iraq even after the agreement is implemented.

Recommendations

This report argues that less drastic means are available to constrain the Iraqi regime without imposing the costs on the most vulnerable sectors of society. To safeguard the human rights of the Iraqi people, and the civilian populations of all countries targeted by sanctions, CESR calls on the Security Council and the international community to consider the following measures:

- *Modify the oil-for-food deal to remove the limit on oil revenues for humanitarian needs.* Since the UN controls the bank account and will monitor distribution of humanitarian supplies, Iraq should be allowed to sell enough oil to meet all civilian needs. It does not make legal or ethical sense for the Security Council to adopt an arbitrary limit of \$4 billion per year that will guarantee continued deprivation throughout the population. What is gained by allowing more children to suffer and die?
- *Adopt alternatives to comprehensive sanctions on Iraq and in future cases.* The international community should not impose massive and collective suffering on innocent civilians for the sins of their government -- the entire human rights regime is premised on the inherent dignity of the individual. The case of Iraq demonstrates that sanctions are not always a humane alternative to war. Other forms of economic pressure, such as an arms embargo and diplomatic sanctions, should be considered and utilized before imposing comprehensive trade sanctions, which by design impact the weakest members of a society first and the leadership last.
- *Establish a clear legal framework to govern Security Council sanctions.* Although the UN Charter and general principles of international law govern Security Council action, this area of law is less clearly defined than, for example, humanitarian law which governs military conduct during war. CESR therefore recommends that the UN convene an international panel of experts to draft a legal regime that defines the parameters of the Council’s power to maintain international peace and security through sanctions and other forms of pressure. The UN

should also establish an independent mechanism to monitor the actual implementation of different sanctions regimes.

CHAPTER ONE: SANCTIONS AND THE HUMANITARIAN CRISIS IN IRAQ

I. The Sanctions Regime

A. Overview

On August 6th, 1990, the Security Council responded to Iraq's invasion of Kuwait by adopting Resolution 661, which imposed the most severe multilateral sanctions regime in history.¹ Viewed as a short term measure to force Iraq's withdrawal, the sanctions placed a blanket ban on all imports and exports. The cut off in oil sales devastated Iraq's economy, which had formerly provided its citizens with a broad range of free social services, including education, health care and welfare.²

The population of Iraq, which used to enjoy socio-economic conditions comparable to those in the first world, has suffered terrible hardship due to the sanctions. The Council's decision to maintain sanctions following the destruction of Iraq's civilian infrastructure during the Gulf War, and the inability of Iraq and the Council to agree on a humanitarian exception to the sanctions, have led to a steep increase in hunger, disease and death throughout Iraqi society, especially among vulnerable sectors. UN agencies estimate that over 500,000 children under the age of five have died as a result.

B. Sanctions and War

After initially considering an unprecedented ban on all imports, even food items,³ the Security Council decided to allow only the import of "supplies intended strictly for medical purposes, and, in humanitarian circumstances, foodstuffs."⁴ It was left to the discretion of the Sanctions Committee, created under Resolution 661, to determine what constituted humanitarian circumstances.⁵ By March 1991, the Security Council and cooperating states had driven Iraqi forces out of Kuwait by military force, in the process destroying or disabling most of Iraq's civilian infrastructure, including factories, electric power stations, and water treatment and sewage plants.

¹ Resolution 661 called on all States to impose a comprehensive package of financial and economic sanctions. U.N. Security Council, Resolution 661 (August 6, 1990), at paras. 3-4 [hereinafter SC Res. 661].

² As the Economist Intelligence Unit notes: "the Iraqi welfare state was, until recently, among the most comprehensive and generous in the Arab World... which ensured that Iraqis had the highest caloric consumption per head in the Middle East by the end of the decade [1980s]." The Economist Intelligence Unit, *EIU Country Profile of Iraq 1995-96*, at 6-7 [hereinafter EIU 1996]. "With the increase in oil revenues in the 1970s, the health and education system received a relatively high priority in the allocation of budgets, as did the procurement of food and other commodities sold through the state distribution system." *Id.*

³ Conlon, "Lessons from Iraq: The Functions of the Iraq Sanctions Committee as a Source of Sanctions Implementation Authority and Practice," 3 *Virginia Journal of Int'l Law* No. 633 (Spring 1995), at 636.

⁴ SC Res. 661, at para. 6c.

⁵ The Security Council also called on UN agencies to provide information about civilian conditions. U.N. Security Council, Resolution 666 (September 13, 1990), at para. 5 [hereinafter SC Res. 666].

After the war, the Security Council provided the first minor relief from the stringent restrictions on food and other essential items. Cease-fire Resolution 687 exempted foodstuffs from sanctions, and, with notification to the Sanctions Committee, “materials and supplies for essential civilian needs.”⁶ However, the Sanctions Committee, usually at the request of the US and UK representatives, has denied as “non-essential” Iraqi requests for items such as pencils, textbooks, and spare parts for ambulances. Resolution 687 also set conditions with which Iraq must comply for sanctions to be lifted, including defining its border with Kuwait, destroying its capacity to employ weapons of mass destruction, and affirming its liability for war reparations.

C. Humanitarian Crisis

The Security Council has proven unwilling to take effective action to mitigate the civilian impact of sanctions, even in the face of mounting evidence of a humanitarian disaster after the Gulf War. The first effort to address the problem was not made until August 1991, after several highly-publicized UN and independent missions to Iraq revealed the extent of civilian suffering.⁷ In Resolutions 706 and 712, the Security Council proposed an oil-for-food agreement allowing Iraq to sell \$1.6 billion of oil every six months, with 40% of proceeds to pay UN expenses and war reparations, and 60% for the purchase of food and medicine for the civilian population.⁸ However, this amount was well below what the UN itself had estimated as the minimum emergency needs for food and medicine, \$3.6 billion per year.⁹ The agreement also placed strict conditions on the purchase and delivery of imported items. Iraq rejected these conditions as an infringement on its sovereignty.

Despite continuing reports that sanctions were impacting the most vulnerable sectors of Iraqi society, the Security Council did not revisit the issue until April 1995, when it proposed a similar oil for food deal, with slightly less strict conditions, under Resolution 986. On May 20, Iraq and the UN agreed on the following details: Iraq is permitted to sell \$1 billion of oil over a 90 day (renewable) period in order to buy humanitarian supplies. All proceeds from such sales will be placed in a UN-controlled bank account, to which Iraq has no access. Of the \$4 billion of revenues over one year, 30% will go towards reparations for the Gulf War, 15% will go towards humanitarian supplies for 3 million Kurds in northern Iraq, 5-10% will pay for UN operations in Iraq, and at least 5% will cover repair and maintenance of the oil pipelines – leaving less than \$1.6 billion for Iraq’s remaining population of 18 million, approximately \$7.50 per person per month.¹⁰

⁶ U.N. Security Council, Resolution 687 (April 3, 1991), at para 20 [hereinafter SC Res. 687].

⁷ See, e.g., *Report to the Secretary-General on the Humanitarian Needs in Kuwait and Iraq in the Immediate Post-Crisis Environment by a Mission to the Area led by Mr. Martti Ahtisaari*. U.N. Doc. S/22366 (March 1991) [hereinafter Ahtisaari Report]; Harvard Study Team, *Public Health in Iraq after the Gulf War* (May 1991) [hereinafter HST Report]; *Report to the Secretary-General on the Humanitarian Needs in Iraq by a Mission led by Sadruddin Aga Khan*, U.N. Doc. S/22799 [hereinafter Aga Khan Report]; *Report by the Secretary-General Pursuant to Paragraph 5 of SC Res. 706* (1991), U.N. Doc. S/23006 [hereinafter S-G Report]; International Study Team, *Health and Welfare in Iraq after the Gulf Crisis: An In-Depth Assessment* (August 1991) [hereinafter IST Report].

⁸ U.N. Security Council, Resolution 706 (August 15, 1991) [hereinafter SC Res. 706]; U.N. Security Council, Resolution 712 (September 19, 1991) [hereinafter SC Res. 712].

⁹ The Aga Khan Report provided sector-wise estimates of the dollar amounts needed to repair the damage and to prevent the worsening of the humanitarian situation.

¹⁰ See text of Agreement between Government of Iraq and U.N. Secretariat (May, 1996) (on file with authors).

However, the UN Secretariat and UN agencies have estimated that Iraq requires almost \$4 billion per year in food and medicine alone – more than twice the amount allocated to humanitarian needs under the food-for-oil deal. This does not even begin to account for the massive capital expenditure needed to rebuild the health infrastructure (especially water and sewage plants) in order to stop the cycle of disease. In 1991, the UN Secretary-General estimated that restoring these systems and addressing all civilian needs would cost \$22 billion.¹¹ This the food-for-oil deal, while a positive first step, will not address the causes of economic collapse, hunger and disease in Iraq.

II. Economic Collapse

A. Overview

In 1989, revenues from the sale of oil accounted for 60 percent of Iraq's gross domestic product (GDP) and over 90 percent of its foreign currency earnings.¹² By 1991, Iraq's real GDP had fallen by at least 75 percent¹³ and is now estimated to equal Iraq's GDP in the 1940s, prior to the oil boom and modernization of the country.¹⁴ The UN estimates that four million persons are currently living in extreme poverty, about 20 percent of the population.¹⁵

High inflation due to economic collapse has rendered the Iraqi dinar (ID) almost worthless. The exchange rate used to be one ID to three US dollars (USD) in August 1990. By December 1995, one dollar brought 3,000 ID.¹⁶ The value of the dinar rose to about 500 per dollar following the oil-for-food deal on May 20 – still 1,500 time greater than the pre-sanctions exchange rate.

The collapse of the economy has devastated economic security for the vast majority of Iraqis. High prices for basic commodities, low and declining real wages, and high rates of unemployment have reduced a large percent of the population to penury. People have employed a variety of various survival strategies, such as selling off household assets, engaging in petty trading, post-harvest gleaning, begging and theft. Under these conditions, life has become a daily struggle for survival for all except the fortunate few – black market traders, those receiving remittances from abroad, and those closely connected to the regime.

B. Food Security

Prior to sanctions, Iraq imported 75-80% of all calories consumed in the country at a cost of over \$2 billion in 1989.¹⁷ After one year of sanctions, a survey by the International Study Team (IST) found that basic food prices had risen at least 15 times while wages remained stagnant.¹⁸ A survey by the UN's Food and Agriculture Organization (FAO) in August 1995 reported that conditions had dramatically worsened: "Prices of basic foodstuffs have risen phenomenally. It is mind-boggling that the price of the most basic food item, wheat flour, has risen by 11,667 times compared with July 1990."¹⁹

¹¹ See S-G Report.

¹² EIU 1996, at 13.

¹³ *Ibid.*, at 13.

¹⁴ *Id.*

¹⁵ Department of Humanitarian Affairs, *U.N. Consolidated Inter-Agency Humanitarian Cooperation Programme for Iraq: Mid-term Review* (September 21, 1995).

¹⁶ The World Health Organization, *The Health Conditions of the Population in Iraq Since the Gulf Crisis* (March 1996), at 2 [hereinafter WHO Report].

¹⁷ Susan Epstein, *Iraq's Food and Agricultural Situation During the Embargo and the War*, 91-199 CONG. RES. SERV. REP. (Feb. 26, 1991), at 5. Each of the main food suppliers to Iraq -- the United States, the E.E.C., Turkey, Canada and Australia -- played an active role in the Gulf War.

¹⁸ See IST Report.

¹⁹ Food and Agriculture Organization of the United Nations, *Technical Cooperation Programme: Evaluation of Food and Nutrition Situation in Iraq* (September, 1995), at 10 [hereinafter FAO Report 1995].

The FAO estimates that Iraq must import \$2.7 billion of food to meet 1995-96 needs, due to major shortfalls in Iraq's domestic food production. Overall production has been severely damaged by lack of quality seeds, pesticides and herbicides, and spare parts for the irrigation system.²⁰ Production of cereals in 1994-95, for example, fell more than 27% from the 1989-90 level.²¹

International relief agencies have provided limited food aid. In 1995, the UN World Food Program (WFP) fed 1.3 million people -- mostly children, the elderly and refugees. Of these, about 800,000 lived in the Kurdish-controlled areas and only 500,000 in the rest of Iraq.²² However, reduction in funds from donor countries has reduced the numbers of WFP recipients by half. FAO's 1995 survey concluded that: "The situation is so grave that it cannot be met through UN and NGO food assistance. The only sensible solution to the precarious food supply situation is to enable Iraq, a potentially rich country, to import foods to meet its entire requirement."²³

C. The Food Rationing System

In September 1990, one month after the Security Council imposed sanctions, the Iraqi government instituted a food rationing system which has been critical in sustaining the population and thereby preventing famine.²⁴ When first introduced, the ration provided only 53% of the daily caloric needs at nominal cost. On September 24, 1994, the ration was reduced to 34% of the daily caloric needs because of inadequate domestic production and lack of foreign currency for imports.²⁵ Despite the reduced ration, the FAO found that: "the situation of famine has been prevented largely by an efficient public rationing system... [but] because the country is unable to resume international trade and earn foreign exchange by selling oil, the collapse of the whole public rationing system is threatened... and a collapse of the system will spell a catastrophe for the majority of the Iraqi people."²⁶ The FAO found that the system was still "highly effective in reaching the population," excluding the three Kurdish governorates which are outside of the Iraqi government's control.²⁷

III. **Health Conditions**

A. Overview

Prior to sanctions, Iraq had an advanced and efficient health care system that provided the population with a first-class range of health services.²⁸ Over 90% of the population had access to primary health care, including laboratory diagnosis and immunizations for childhood diseases such as polio and diphtheria.²⁹ During the 1970s and 80s, British and Japanese companies built scores of large, modern hospitals throughout Iraq, with advanced technologies for diagnosis, operations and treatment. Secondary and tertiary services, including surgical care and laboratory investigative support, were available to most of the Iraqi population at nominal charges.³⁰ Iraqi medical and nursing schools emphasized education for women and attracted students from throughout the Middle East. A majority of Iraqi physicians were trained in Europe or the United States, and one-quarter were board-certified specialists.

²⁰ *Ibid.*, at 11.

²¹ *Ibid.*, at 3.

²² Information on WFP's program is drawn from Associated Press wire reports, December, 1995.

²³ *Ibid.*, at 9.

²⁴ Under the system, food is transported at government expense to distribution warehouses located throughout the country. The warehouses supply 50,000 private retail stores, which in turn distribute monthly rations to households within their area for a nominal cost. Each household is given a ration card listing the number of family members.

²⁵ FAO Report 1995, at 9.

²⁶ *Ibid.*, at 8-9.

²⁷ *Ibid.*, at 8.

²⁸ EIU 1996, at 9.

²⁹ WHO Report, at 10.

³⁰ *Id.*

B. Health Care Services Under Sanctions

The sanctions have disrupted health care services in all parts of Iraq. Hospitals and health centers cannot adequately respond to the increased levels in morbidity seen in the population. Inadequate health services, combined with the rise in unsanitary living conditions, has led to sharply increased prevalence of infectious, parasitic and water-borne diseases.

Many trained staff have left work due to salaries worth less than \$5 per month (at April 1995 rates). Those who stay must cope with shortages in essential supplies and medicine, such as antibiotics, anesthetics, surgical instruments, and dispensable equipment such as gloves, syringes, gauze, and catheters.³¹ A survey by WHO estimated a 50% reduction in laboratory services due to lack of equipment, chemicals, and reagents.³² In addition, surgical interventions have been reduced by over 60% in the past five years. According to the WHO study, "the deficiency in surgical care must have vastly increased morbidity and mortality levels."³³

C. Child Mortality

Prior to the war, Iraqi children suffered more from excessive eating than from malnutrition: "calorie availability was 120% of actual requirement, nutritional deficiencies were at very low levels, while clinical disorders due to excessive and unbalanced consumption of foods were increasingly encountered."³⁴ Studies conducted after the Gulf War have shown a dramatic increase in the infant mortality rate (IMR) and the under-five mortality rate (U5MR).

During the first eight months of 1991, IST estimated that 50,000 children under the age of five had died due to war and sanctions, based on a three-fold increase in the U5MR.³⁵ A study conducted in late 1995 by the FAO found that the IMR had doubled and the U5MR had increased by five times.³⁶ A WHO report released in March 1996 found a similar doubling in the IMR and a six-fold increase in the U5MR.³⁷ These mortality rates translate into a figure of over half a million excess child deaths as a result of sanctions.³⁸ This increase is a result of two synergistic factors -- poor nutrition and increased prevalence of disease -- compounded by inadequate health services.

³¹ WHO Report, at 11.

³² *Ibid.*, at 11-12.

³³ *Ibid.*, at 11.

³⁴ *Ibid.*, at 2.

³⁵ See IST Report; Ascherio *et al*, *Special Article: Effect of the Gulf War on Infant and Child Mortality in Iraq*, *New England Journal of Medicine* 327:931-936 (September 24, 1992).

³⁶ FAO Report 1995, at Table 28.

³⁷ WHO Report, at 6-7.

³⁸ Zaidi & Smith, *Health of Baghdad's Children*, *The Lancet* 346: 8988, at 1485.

D. Child Nutrition

Surveys conducted since the Gulf War have also shown a steadily deteriorating level of nutritional status. Only 3.4% of children under the age of five surveyed in Baghdad in late 1991 exhibited signs of wasting,³⁹ which can be described as emaciation requiring urgent care. A survey by the FAO and NRI in 1995 showed that the wasting rate had more than tripled to 12% among children in Baghdad.

The WHO report also found an alarming reappearance of nutritional diseases which had all but disappeared from Iraq prior to the sanctions. The monthly average number of marasmus and kwashiorkor cases admitted to hospitals has risen by 50 times.⁴⁰ Nutritional anemia and deficiencies in intake of vitamin A, iodine and calcium deficiency are also common in children.⁴¹

The WHO report on health conditions in Iraq closes with a grim warning: "The vast majority of the country's population has been on a semi-starvation diet for years. This tragic situation has tremendous implications on the health status of the population and on their quality of life, not only for the present generation, but for the future generation as well... the world community should seriously consider the implications of an entire generation of children growing up with such traumatized mental handicaps, if they survive at all."⁴²

IV. **Water and Sewage Systems**

A. Overview

Iraq has a natural abundance of water and a modern sanitary infrastructure. Ten major sewage treatment plants serve provincial capitals and over 200 fixed water treatment plants are located throughout the country. Prior to sanctions, potable water networks distributed over four million cubic meters of treated water to 93% of the urban and 70% of the rural populations.⁴³ Iraq spent \$100 million per year on preventive maintenance of these systems.⁴⁴ By 1990, Iraq had concluded over \$400 million of contracts with foreign firms to raise water production 50% by 1993 -- all were canceled after sanctions.⁴⁵

³⁹ See IST Report; Smith & Zaidi, *Nutritional Assessment of Children in Iraq*, Nutrition Review (1992)

⁴⁰ WHO Report, at 6.

⁴¹ *Ibid.*, at 4.

⁴² *Ibid.*, at 16-17.

⁴³ United Nations Children's Fund (UNICEF), *Proposal for Water and Environmental Sanitation Project* (August 1994), at 1 [hereinafter UNICEF Report].

⁴⁴ FAO Report 1995, at 21.

⁴⁵ UNICEF Report, at 1.

B. Breakdown of the Systems

Water plants throughout Iraq are now operating at extremely limited capacity, and the sewage system has virtually ceased to function. While these systems sustained significant damage during the Gulf War and subsequent uprisings, the IST survey in late 1991 concluded that “the primary rate-limiting factors are lack of spare parts and chlorine and erratic electrical supply.”⁴⁶ Functioning plants must be operated around the clock to make up for supply shortages, leading to breakdowns in machines and parts. Very few lift stations are now operating, and the pipe networks have many breaks, resulting in sewage overflows and dangerous cross-connections between water and sewage lines.⁴⁷ Under sanctions, Iraq does not have the hard currency to import enough foreign-made spare parts, ensuring systematic deterioration.

Equipment and supplies from international relief agencies such as the United Nations Children’s Find (UNICEF) have amounted to less than \$10 million over the past five years.⁴⁸ This assistance, which includes chlorine and new pumps, has helped maintain the water treatment system at 50-60% of pre-sanctions efficiency.⁴⁹ But it cannot stop the deterioration of these essential public health facilities. The FAO report concluded that: “The water and sanitation system remains critical throughout the country. The basic reason is the lack of spare parts for a variety of equipment which cannot be purchased without foreign exchange. In addition, specific Sanctions Committee approval is required for most of the items.”⁵⁰

C. Impact on Health

The deterioration of the sanitary system has had a serious adverse impact on the health of the Iraqi population, especially children. Raw sewage floods the streets of many cities throughout Iraq, creating breeding grounds for disease. Untreated sewage is dumped directly into the Tigris and Euphrates rivers, along which two-thirds of Iraq’s population live. Water treatment plants draw contaminated river water but lack sufficient chlorine for effective and safe treatment. A 1994 UNICEF study of drinking water in three regions found bacterial contamination in over 30% of the samples.⁵¹ In Basrah this year, the WHO found that 65% of drinking water samples failed either microbiological or mineral purity tests.⁵² These high levels of contamination help explain the astonishing rise in disease and mortality observed throughout the country

⁴⁶ *Id.*

⁴⁷ FAO Report 1995, at 20.

⁴⁸ *Ibid.*, at 21.

⁴⁹ UNICEF Report, at 2.

⁵⁰ FAO Report 1995, at 20.

⁵¹ UNICEF Report, at 4.

⁵² WHO Report, at iv.

CHAPTER TWO: FINDINGS OF CESR MISSION TO IRAQ

I. Overview and Methodology

In April-May 1996, the Center for Economic and Social Rights (CESR) organized a mission of 24 research scientists, economists and lawyers from 8 different countries to survey the impact of comprehensive sanctions on the civilian population of Iraq. The purpose of the mission was to document the extent of civilian suffering caused by sanctions, with a focus on child health, and to educate policy-makers and the public as to the human rights implications of sanctions.

The mission included an economics survey and a health survey, which was divided into three components: a health facilities survey, a health infrastructure survey, and a child mortality and nutrition survey. The economics team collected information in Iraq from May 3-13, and the health team from April 2-19. The health team was accompanied by a television crew from the CBS show *60 Minutes*, a journalist from the British newspaper *The Guardian*, and a photographer.

A. Economics Survey

The objectives of the economic survey were: to assess the impact of sanctions on poverty and livelihoods; to analyze the mechanisms through which a macro shock caused by sanctions works its way to the level of households and individuals; to document the performance of public institutions in alleviating the effects of sanctions; and to document the survival strategies adopted by families and individuals. The team of three economists from the London School of Economics conducted surveys of over 50 households in urban as well as rural areas in order to canvass information about food consumption, earnings and the functioning of the government ration system, visiting urban and rural areas in seven of 15 governorates in central and south Iraq (excluding the three Kurdish-controlled governorates). In addition, the team collected information on prices, wages and employment from surveys of markets as well as various types of economic enterprises, including large government factories, private sector industrial and commercial units of various sizes, and private farms. The team also conducted tours of the government ration system facilities, hospitals and health centers, and interviewed relevant officials in the Ministries of Trade, Labour and Social Welfare, and Agriculture.

B. Health Facilities Survey

The objective of the health facilities survey was to evaluate the condition of the health care system and determine its ability to meet the needs of the population. The team of three public health experts visited four health centers and 25 hospitals, including 12 general hospitals, two private hospitals, seven pediatric hospitals, and four specialized hospitals, representing over 20 percent of the institutional beds in Iraq. The team visited health facilities in seven of the 15 governorates in north, central and south Iraq, and interviewed attending physicians and staff according to a standardized questionnaire and reviewed available records from individual hospitals and the Ministry of Health. The team also assessed the availability of medicines, equipment, and supplies, and the status of clinical management by reviewing individual cases during the visits to facilities. To facilitate access to hospitals, the team was accompanied at times by a clinician from the Department of International Health of the Ministry of Health, who did not interfere with the team's survey.

C. Health Infrastructure Survey

The objective of the health infrastructure survey was to assess the capacity of water treatment and sewage facilities to serve the population of Iraq. The team of three lawyers and one researcher visited 18 facilities, including four sewage plants, 11 water treatment plants, and three pumping stations in seven of the 15 governorates in north, central and south Iraq. The team interviewed engineers and technical staff at government offices for water and sewage departments and the facilities according to a standardized

questionnaire, and made direct observations and reviewed records at the facilities. The team also assessed the impact of sanctions on the availability of equipment and supplies needed to operate the facilities. To facilitate access to water and sewage plants, the team was accompanied at times by an engineer from the local office of the General Establishment of Water and Sewage, who did not interfere with the team's survey.

D. Child Mortality and Nutrition Survey

The child mortality and nutrition survey in Baghdad had two primary objectives. First, to assess the mortality rate and nutritional status among children under five years of age. Second, to determine the cause and the circumstances of post-neonatal deaths among this population. The team of 28 physicians, public health experts, and health surveyors included seven international participants from the Harvard School of Public Health, seven participants from Jordan, and 14 participants from the Nutrition Research Institute (NRI) in Baghdad, affiliated with the Ministry of Health.

The international members designed the survey and questionnaire, supervised field work, and selected the sample of forty-four new clusters, each with 24 households, and 20 repeat clusters from the 1995 FAO study, each with 12 households. Similar to the FAO 1995 study, the survey sample was based on a random sampling design from the 1991 survey by the International Study Team, and was proportionate to population size according to the 1987 census. Participants from Jordan and the NRI conducted household interviews, arriving without prior notification to collect information on maternal age, maternal education, date of birth of child, date of death, prevalence of diarrhea, and the weight and height of children under five years of age. Households reporting a post-neonatal death were visited again to determine the possible cause of death. The team was not accompanied by any government officials. At the time of this publication, the data is still being analyzed; the results will be available at a later date.

II. **Economics Survey**

A. Poverty in Iraq

Sanctions have caused Iraq's advanced and oil-rich economy to shrink to less than 10% of its previous GDP. The root of the economic crisis is an acute shortage of foreign exchange. Prior to sanctions, oil exports made up 90 percent of export revenues, of which some \$2 billion was used just to import food. Sanctions blocked this source of foreign exchange earnings, so imports of medicines, food, and spare parts for production were drastically curtailed. Iraq's inability to export, and hence to earn foreign exchange contributed to the collapse in the value of the Iraqi dinar. This in turn led to sharp rises in the prices of imported goods, which include a large part of Iraq's domestic consumption of food and medicine. Even though the sanctions regime does not in theory restrict the import of food and medicines, the absence of foreign exchange severely limits Iraq's ability to import these goods.

The lack of foreign exchange also directly affects the government budget. Previously, oil revenues financed civil servant's wages, the army, hospitals, schools and subsidies to state industry. With the loss of revenue the government can no longer afford to pay comparable wages to those paid prior to sanctions, but it has maintained payment. They have done this by printing money to finance expenditures, and this has caused near hyperinflation. Over the 10 days spent in Iraq by the team, the one dollar value of the Iraqi dinar fluctuated between 700 to 1200 ID.

The U.S. representative to the U.N., Ambassador Albright, recently claimed that the government has spent one billion dollars building palaces over the last five years.⁵³ At current exchange rate, the economics team estimates the GNP at around \$3 billion, or \$160 per capita.⁵⁴ This purported expenditure would thus

⁵³ Interview aired on CBS' *60 Minutes* (May 12, 1996).

⁵⁴ This is a rough estimate based on two separate methods of calculation: The first takes Iraq's published dinar GNP for 1992 and uses the exchange rate of \$1=20 ID for 1992. The second uses, from household level, a generous estimate of monthly income of \$8 per capita or \$96 per capita for the year. To this figure add another two-thirds to account for profits and other incomes.

equal approximately six percent of GNP on an annual basis. Given the limited revenues of the government and the current low wages and building material costs for goods produced in Iraq, it is very unlikely that Albright's estimate is accurate.⁵⁵

B. Vulnerable Groups

The extreme economic recession has created a number of particularly vulnerable groups. People dependent on the government for the main source of income, such as civil servants and pensioners, no longer receive adequate salaries to survive. For example, a typical civil servant with a family of seven to support now earns three to four thousand ID per month, equivalent to US \$3 to \$4 dollars. At current prices in Baghdad, this will buy less than two kilos of flour per person for the month or 10 eggs per person. Unable to support their families, the household survey shows that most workers have tried to find additional jobs to supplement their income, or sell their household assets. People residing in regions with undeveloped infrastructure and limited economic opportunities, such as the southern part of Iraq devastated in the Iran-Iraq war and the Gulf War, were already amongst the poorest in the nation and now face levels of poverty similar to those found in some sub-Saharan African countries and the poorest parts of South Asia.

C. The Role of the Public Food Ration System

The state food ration system has become the main lifeline for families. The economics team, through its household survey, determined that the system is highly equitable and appears to be one of the most efficient distribution systems operating in the world. Visits by the team in various parts of al-Kut, Amarah, Basrah, as well as in a number of rural areas in the center and south of the country indicated that the state ration is equitable across regions and efficiently run. Although the team was not able to evaluate the functioning of the ration system in all areas of Iraq (in particular the southern marshes where the government alleges a security threat) it did not find any evidence of systematic discrimination in the supply of ration.

The team noted that the success of the ration system is based on a number of factors. First, there appears to be a high level of political commitment on the part of the government to ensure that people have access to the basic bundle of staple commodities. This commitment is not inconsistent with the generally repressive nature of the regime, but rather, can be seen as an important instrument for the maintenance of political control and support. The team made some preliminary calculations on the cost of maintaining this system in its current state, i.e. providing one-third of the caloric needs of an adult. The cost is estimated in the range of eight to 15 percent of GNP, making it a large fraction of the government's total expenditures and demonstrating that it is a key priority of the government. The 15 percent includes costs incurred during storage and transport. Second, the system is structured around a judicious mix of the public and private sector, with good mechanisms for monitoring and cross-checks. For example, there is now a computerized list of all beneficiaries. The economics team concluded that without the ration system Iraqis would likely have experienced a widespread famine.

The team considers that the 8-15 percent estimated expenditure for the ration system is in the low range. However, the figure serves as a gauge to compare commitment of other countries to social and welfare expenditure. For example, in the U.S. total government expenditure on social security and welfare amounted to around seven percent of GDP in 1992.

D. The Future of Sanctions

If the status quo on sanctions is maintained, the lack of access to medicines, adequate food and spare parts will ensure that the humanitarian situation continues to deteriorate. The recently-concluded food-for-oil

⁵⁵ The US Mission, which originally put forth the figure of \$1 billion for palaces, has since stated that the estimate was based on "the cost of constructing similar buildings in the region," and therefore did not take account of Iraq's peculiar economic conditions. However, the devaluation of the dinar means that it is significantly cheaper to build projects in Iraq than elsewhere "in the region." The Mission was not able to confirm what portion of expenditure, if any, might come from foreign exchange earnings. Meeting between CESR members Roger Normand and Sarah Zaidi and the U.S. Mission representatives Ambassador Ghnem, Thomas Countryman and David Shapiro (May 15, 1996).

deal between Iraq and the UN, which allows Iraq to sell \$4 billion of oil over the course of a year, will provide some relief. However, after deductions for war reparations and UN expenses, Iraqi civilians will receive less than 60% of the revenues, one-quarter of which is earmarked for 3 million Kurds in northern Iraq. This leaves approximately \$1.6 billion for Iraq's remaining population of 18 million -- less than half of the needs for food and medicine according to UN estimates. And these figures do not even take into account the capital expenditures necessary to rebuild the health infrastructure, in particular the water and sanitation systems, and the public and private sectors in which Iraqis earn their living.

On the other hand, the lifting of sanctions would have an immediate and drastic impact on living conditions. Notwithstanding public comments by Western governments about Iraq's spending priorities, the Iraqi government has demonstrated a long-standing commitment to meeting the population's basic needs, both before sanctions through a generous welfare system, and after sanctions through the public rationing system. It can therefore be expected that revenues from renewed oil sales would increase the supply of imports and sharply reduce the prices of goods, leading to a rise in purchasing power of all households, and a corresponding reduction in hunger and malnutrition. Increased funds would also allow the government to pay decent wages in the public sector and begin rebuilding the health infrastructure, thereby stopping the cycle of disease.

III. Health Facilities Survey

A. Overview

Iraq's health system, formerly the most advanced and efficient in the region, has been devastated by sanctions. The system's ability to respond to the medical needs of patients has dramatically diminished since the imposition of sanctions in 1990 and worsens each year. Based on independent observations in health facilities and interviews with staff, the team found that hospitals and health centers are working at a fraction of their designed capacity due to progressive deterioration in basic supportive services such as electricity, water supply, and sewage disposal, and serious shortages in pharmaceuticals, reagents, basic medical supplies and equipment. As a result of the breakdown of health services in Iraq, there have been increases in chronic diseases, including diabetes, cancers and kidney disease, and preventable infections, such as diarrhea, pneumonia, whooping cough and typhoid. Many Iraqis are now dying from diseases that were easily treated prior to sanctions.

The poor sanitary conditions in hospitals and the mounting shortages of medical supplies and pharmaceuticals have resulted in hospitals serving as dangerous foci for cross-infections. Patients seeking treatment of one disease often catch another disease at the hospital. This situation disproportionately affects children, the elderly and those with chronic illnesses. Increasingly, patients are seeking care from private hospitals or in private wards at public hospitals, because these facilities have separate rooms and bathrooms. However, private services also have shortages in supplies, equipment and drugs, and are far too expensive for most Iraqis to afford.

In spite of an estimated 50% decline in hospital attendance, there have been significant increases in reported rates of mortality in hospitals. The World Health Organization, citing statistics from Iraq's Ministry of Health (MOH), reports that each year an estimated 90,000 excess deaths have occurred in public hospitals since sanctions were first imposed. Children in particular are suffering from elevated mortality and morbidity. Children exhibiting signs of moderate to severe malnutrition occupied half the beds in pediatric hospitals visited by the team. Severely malnourished children with marasmus and kwashiorkor have become so common that the United Nations Children's Fund (UNICEF) and the World Food Program (WFP), in collaboration with the MOH, established 20 Nutritional Rehabilitation Centers throughout the country in March 1996 to treat severely malnourished children.

B. Breakdown in Utility Services

The team found problems with basic utilities such as water, sanitation, and electricity in all hospitals and health centers visited. Water supply was erratic, with entire wards lacking running water and relatives of

patients often forced to bring in clean water from outside the hospital. In Alaweah Hospital for Obstetrics and Gynecology in Baghdad, there was no water available for washing mothers and their newborns after delivery. At major hospitals throughout Iraq, doctors reported that they and other staff were not able to wash their hands due to shortages in the supply of water and soap, thereby increasing the risk of cross infection.

Sanitation and waste disposal is also a major problem in all hospitals visited. Team members noted blocked drainage outlets, leaky and broken pipes, and a pervasive smell of garbage and fecal matter. Most hospitals are cleaned with plain water due to the complete lack of detergents and disinfectants. At the Basrah Teaching Hospital, the operating rooms were closed every few days in order to remove the sewage. Under such conditions, good hygiene is impossible to maintain, resulting in increased infestation of flies, mosquitoes, cockroaches, bed bugs, rodents, and other disease-carrying pests. In hospitals throughout Iraq, the team observed children covered with mosquito bites, insects inside incubator units, and cockroaches in operating rooms. Patients must bring their own mosquito nets to protect themselves from insects.

Shortages in electricity have affected hospital services, especially in the summer when demand is highest. Power fluctuations have destroyed sensitive medical equipment. With a few exceptions, central air conditioning and heating in the hospitals visited no longer work. Elevators rarely function, and lights are usually kept off during the day. There are also severe shortages of light bulbs and fluorescent tube lights; team members observed operating theaters that were only dimly lit. In Kerbala Pediatric Hospital, doctors reported carrying children to the best lit areas for examination. Although some hospitals have electrical generators for use during power outages, they break down frequently because of lack of spare parts. Even when working, they can provide electricity only to priority areas such as the operating theater, intensive care and coronary care units, and the emergency room.

C. Shortages in Supplies

There are severe shortages in medical supplies such as disposable syringes, surgical gloves, intravenous infusion (IV) sets and cannulas, blood bags, sutures, catheters, cotton wool, gauze, dressing, plaster, and other basic materials. As a result, these materials are often commonly shared, increasing the risk of cross-infections. The team observed patients sharing syringes or using the same syringe for 24 hours. In Kerbala Pediatric Hospital, physicians were observed using a two ml. syringe to draw fluid out from the lungs of a malnourished infant, rather than the standard 50 ml. syringe. The team also observed physicians using thick stomach tubes to catheterize patients, which can cause internal damage and bleeding, particularly for patients with prostate conditions.

Surgical supplies and instruments are also in short supply. The team observed surgeons using a continuous stitch to save sutures, and re-using gauze washed in saline for re-insertion in the body cavity to control bleeding during surgery. During an appendectomy at the al-Kindi General Hospital, the team witnessed a surgeon trying to operate with scissors that were too blunt to cut the patient's skin and forceps that no longer had enough teeth to hold up the patients skin. One physician stated that "sometimes we can do nothing more than watch them writhe in pain".

Serious shortages of oxygen affect all hospitals. Domestic production falls well short of the need, so hospitals must ration the available oxygen supply. The team witnessed oxygen masks being alternated between patients and oxygen tubes being spliced for two patients. Of the 25 hospitals visited, only one still had a functioning central oxygen supply system. In addition, hospitals lack basic clothing items such as fresh linens, blankets, pillows, and gowns for patients. Patients who could not afford to bring their own sheets were seen lying on dirty and bloodstained mattresses.

Laboratories in hospitals have shortages of slides, cover plates, test-tubes and pipettes. The lack of reagents has considerably reduced diagnostic capabilities, and advanced diagnostic tests such as acid-base analysis are no longer available. Although simple cultures of urine and stool are available, laboratories are not able to carry out tests to measure fasting blood sugar levels, essential for the management of diabetic patients, or to perform investigations of clotting functions needed for patients with hemophilia and thalassemia. These conditions make diagnosis of new illnesses and management of chronic diseases extremely difficult.

Hospitals are also experiencing shortages in paper supply, making it very difficult for staff to keep proper records for case management, especially since computerized systems in hospitals are no longer functional. The team observed that records were often kept on scraps of paper, on packaging available from gloves or pharmaceuticals, and on the reverse side of another patient's records.

D. Shortages in Equipment

Health services throughout Iraq are affected by the breakdown of essential equipment. Even in major urban centers like Baghdad, ambulances are not running due to lack of spare parts, so patients seeking treatment have to find their own transport. There are also shortages of wheelchairs, stretchers, and beds. Iraqi requests for items such as ambulance spare parts and hospital beds are routinely denied by the Sanctions Committee. Lacking spare parts, hospital departments such as radiology, oncology, laboratory diagnostics, prosthetics and surgery, which were equipped with very sophisticated machines and equipment, are fast becoming obsolete. At the Kerbala General Hospital, the team witnessed the death of a 44-year old male patient from a heart attack because the emergency room did not have a functioning cardiac monitor or defibrillator.

The number of x-rays that can be performed is limited by the amount and age of the film available, and many radiology technicians reported rationing film for emergency cases. About one-half of the x-ray machines the team inspected are no longer operable because of the lack of parts such as an x-ray tube. Samarra General Hospital reported only enough film for eight x-rays per day, whereas previously the average daily use was 60 x-rays. When the team visited Najaf General Hospital, no x-rays had been carried out in the past month; instead all diagnoses were made clinically.

Most incubators, one of the essential pieces of equipment for premature baby units, are not working due to the lack of spare parts. In a properly functioning incubator, oxygen is piped from a central supply and air is circulated by controlled fans. In many hospitals, the team observed incubators with premature infants wrapped in cloth lying on torn mattresses, in cold environments with oxygen fed from a cylinder by a tube. The Alaweah Hospital in Baghdad had 45 fully functional incubators prior to 1991, but now only 12 partially function. Of these, the team observed problems such as split plastic mattresses, broken temperature regulators, and broken rubber seals on the hand doors.

E. Shortages in Pharmaceuticals

Prior to sanctions, Iraq imported about \$360 million worth of drugs annually, producing only a small amount on the domestic market. In 1996, Iraq is expected to import \$13 million of drugs under the Jordan Protocol, a bilateral agreement between Iraq and Jordan approved by the Sanctions Committee allowing Iraq to import drugs which have 50% of their content manufactured in Jordan. An estimated \$20 million of drugs are also donated by international agencies, such as UNICEF and WHO, leaving an enormous shortfall in pharmaceutical supplies.

Each hospital and health center has a central pharmacy that receives a limited monthly quota of drugs from the MOH which is not nearly enough to satisfy the need. Because of shortages, physicians treat patients with one type of antibiotic one week and another type the next week, depending on availability. There are severe shortages in anesthetic drugs, seriously complicating operations. The most dramatic shortages are seen in emergency rooms. The emergency department in the al-Kindi hospital, for example, receives 10 ampules of aminophiline, 3 ampules of adrenaline, 2 ampules of atropine, and 3 ampules of valium per eight hour shift, which must cover an average of 200 cases. Many emergency cases of convulsions, severe asthma, and organophosphate poisoning, which would have been treated effectively prior to sanctions, have resulted in fatality due to the lack of simple medicines. There are also severe shortages in medications for patients with psychiatric disorders, such as schizophrenia. The team observed the use of electro-convulsion therapy (ECT) without any anesthesia for the treatment of schizophrenia, instead of the preferred method of anti-psychotic medications.

The MOH has produced a list of 400 essential imported drugs that must be imported, including 28 types of cardiovascular drugs, seven respiratory drugs, 17 central nervous system drugs, 32 antibiotics, 18 endocrine system drugs, 18 anesthetic drugs, 30 cytotoxic drugs, and items such as IV fluids, dental drugs, contrast media and testing reagents. However, limited financial resources, combined with import restrictions placed by the UN Sanctions Committee, prevent Iraq from purchasing these drugs. For example, the import of the cytotoxic drug, *Mustine*, manufactured by a British pharmaceutical, has been denied on the basis that it contains mustard which could conceivably have a military use as mustard gas.

F. Changes in Clinical Care

Under these increasingly difficult conditions, the practice of medicine in Iraq has undergone important changes. Numerous physicians and nurses, many of them trained in the West, told team members that they were not trained to practice medicine in such primitive conditions, which resembled Iraqi medical practice 50 years ago. They struggled with the daily decisions of allocating scarce supplies that meant life and death to patients. They also described how many of the most qualified medical staff had left the hospital system to work privately or take other jobs, since doctors were paid an average of 3,000 ID, equivalent \$5 per month at current exchange rates.

Burn units provide a dramatic example of the status of medical care under sanctions. Patients with severe burns fight for their lives under the best of conditions. In Iraq, the survival potential for patients with burns over 50 percent of their bodies is almost zero, because of the shortages of dressings, ointment, and antibiotics, in conjunction with the inability to perform antibiotic sensitivity testing or check electrolyte balance. In the Al-Zahrawi Hospital in Mosul prior to sanctions, patients with burns covering 70 percent of their bodies used to survive. The day before the team visited the al-Kindi Hospital in Baghdad, a leading physician there who had suffered burns over 60 percent of his body died in front of his helpless and anguished colleagues.

Clinicians interviewed also described excess complications and mortality from chronic diseases, which could be controlled if proper medication and diagnosis were available. They describe an increase in myocardial infarction among hypertensive patients, ischemic heart disease, and retinal changes and ketoacidotic coma among patients lacking insulin. Several young diabetic patients were observed in post-op with amputated extremities, which would have been easily avoided if insulin were routinely available.

Gynecological and obstetrics departments are seeing more complications during pregnancy and delivery. Pregnant women in obstetrics wards are being admitted for frequent bleeding, hypertension and eclampsia. Miscarriages and premature deliveries are reported to have increased. At al-Kansaa Maternity and Pediatric Hospital in Mosul, the death rate among premature infants has increased from 12 percent in 1989 to 29 percent in 1995. It is suspected that maternal mortality may have also risen since sanctions primarily due to increased risk of infection during complications, but no figures were available to confirm the magnitude of the problem.

Pediatric wards are filled with children who exhibit signs of severe malnutrition, particularly marasmus, with classically recognized signs of severe wasting in the ribs and limbs. However, only malnourished children with additional complications, such as gastroenteritis or respiratory infection, can be admitted for treatment. Antibiotics are available in limited quantities to treat infection, but there is no food to treat malnutrition, or clean water and sanitary conditions to avoid water-borne disease. In the past, hospitals used to provide three meals a day without charge, but now meals consist of a small amount of soupy broth with rice. Given the vast magnitude of child hunger in Iraq, UNICEF, the WFP and the MOH have established 20 Nutrition Rehabilitation Centers nationwide for severely malnourished children under the age of five, who weigh less than half the normal weight for their age. The team members observed the increases in demand for these services. The Centers are usually fully occupied, and have adopted a policy to discharge all children after 21 days.

IV. Health Infrastructure Survey

A. Overview

Iraq's modern infrastructure for water treatment and sewage disposal is closely linked to the health and welfare of the population. The water and sewage systems comprise an interconnected network of treatment, distribution and disposal. Each stage is essential to the proper functioning of the entire system. Water plants treat raw surface waters through a process of coagulation with aluminum sulfate to remove suspended particles, flocculation and sand filtration to remove sludge, and disinfection with chlorine to kill bacteria. Treated water is then pumped by lift stations through an underground network to people's homes. A different pipe network collects raw wastes and disposes of them or, in major cities, pumps them to sewage treatment plants. Treatment plants have separate processes to filter grit, grease and sludge, aerate the wastes to remove some bacteria, and then often chlorinate them so the final product can be used for irrigation.

The impairment of Iraq's water and sewage systems due to the sanctions has had profound public health consequences for the population. Without sufficient hard currency to import spare parts and chemical treatment agents for Western-built plants and machines, these systems have been gradually deteriorating. Water treatment plants visited by the team operated at about 50% capacity, and most sewage treatment plants have stopped chemical treatment altogether. This has led to a deadly cycle of contamination, since most of the Iraq's population is served by water and sewage treatment plants located along the Tigris and Euphrates rivers. Raw sewage dumped into the Tigris at Baghdad flows through many cities and towns until emptying into the Shoat-al-Arab at Basrah. Since water plants along these rivers do not have sufficient supplies of chlorine for proper treatment, they often pump contaminated drinking water to households, increasing the risk of diarrhea and dysentery.

The underground pipe networks in cities and large towns that bring potable water to homes and disposes of raw wastes are also in disrepair. Pumping stations are generally not functioning and cannot be repaired, so pressure in the underground network is very low, leading to blockages in the system. Compounding this problem, suction tankers with high pressure air and water to remove blockages are also not functioning, leading to cracked and broken pipes and numerous cross-connections between water and sewage flows. As a result, the team observed sewage flooding streets and homes in neighborhoods throughout Iraq, especially in the South. These unsanitary conditions have contributed to a rise in water-borne and infectious disease, which in turn have led to increased levels of mortality.

The health crisis seen today in Iraq is due in large part to the breakdown of the health infrastructure system and the unsanitary conditions that have resulted from this breakdown. Infants are especially vulnerable because they have not yet developed immunological resistance to basic water-borne diseases. Even if Iraq is permitted to import a limited supply of food and medicine under Resolution 986, infant mortality rates will not return to pre-sanctions levels until the infrastructure is repaired and rebuilt to provide proper water treatment and sewage disposal.

B. Water System

Iraq's water system sustained heavy damage during the Gulf War and particularly the subsequent uprisings in the Kurdish north and Shi'a south. Engineers and government officials reported to the team that rebuilding and maintaining this system was the top priority in Iraq's budgetary allocations for infrastructure. The team observed that water treatment plants were functioning on average at 50% of output capacity, similar to the figures estimated by the International Study Team at the end of 1991. Iraq's ability to maintain the water system at this level is impressive in light of the greatly reduced money available. Zeid Jurji, chief engineer for UNICEF, estimated that the budget for the entire country was \$8 million, with international relief agencies supplying up to \$5 million in addition. The combined total represents about 10% of Iraq's pre-sanctions budget according to figures supplied by both the government and UNICEF.

The team observed similar conditions in 11 water treatment plants visited throughout Iraq, although conditions tended to be worse in the south, where the water table is higher and flooding more common. All these plants were functioning below capacity due to the lack of spare parts, which must be imported primarily from Japan, the UK, the US, Germany, and India. Sophisticated machines such as spiral pumps, lift pumps, motors and turbines, chlorinators, and electrical equipment are in particularly short supply. Equipment that did work ran almost 24 hours per day, significantly shortening their life span. Erratic electrical supply also impeded the delivery of water to the network.

The lack of aluminum sulphate (alum) and chlorine were also serious problems at all water plants visited by the team. Alum was formerly imported from Turkey. The team observed that domestically-produced alum is coarse and tends to form heavy sludge that leaves water with a very high turbidity. The sludge also damages equipment at water plants. The team observed workers at Kerbala water treatment plant removing an enormous buildup of sludge manually from settling tanks. This cleaning process, which took one day when the plant's pumps and sluice valves were operative, was expected to take three weeks.

The lack of chlorine is more serious, since it is used to purify the water. Chlorine was previously imported from Turkey and Jordan; it is now supplied by UNICEF and by a chlorine plant in Najaf that produces very low quality chlorine. According to UNICEF, Iraq now uses less than one-third of the pre-sanctions average of 7,000 metric tons per year. At most plants, chlorine was added manually to water supply because very few chlorinators were functional. The team observed that plants generally had less than one month's supply of chlorine and used insufficient quantities in treatment. Engineers at several plants told the team that they mixed treated and untreated water in order to maintain a sufficient water flow to meet the minimum demands of the population. A UNICEF study found that 40% of tap water samples in Basrah had zero concentration of chlorine, and 58% showed bacterial contamination.

At Sabaa Nissan water treatment plant in Baghdad, four of 14 low-lift vertical pumps were completely non-functional, and the rest operated at 50-60% capacity. Only six of 12 chlorinators were working. The largest water treatment plant in Basrah operated at 40% capacity, but less than 20% of its water supply reached people's homes because of leaks and blocks in the distribution network. The Mosul Right Bank Water Treatment plant had six of eight pumping motors operating at full capacity, but only one of 12 chlorinators worked and chlorine was in very short supply, so raw water was sometimes mixed with treated water and pumped into the distribution network. The Samarra water treatment plant functioned at 50% capacity because four of eight pumps were inoperable. The water treatment plant in Najaf also functioned at 50% of capacity.

Because of high consumer prices and low salaries, many engineers and workers at the water treatment plants have left work, creating a severe shortage of technical staff. Real wages for engineers have dropped from \$750 per month (250 Iraqi dinars) to about \$5 per month (5,000 dinars). Almost all engineers who have remained must work additional jobs in the private sectors to sustain their families. Staff at all plants interviewed by the team reported very low morale.

C. Sewage System

The sewage infrastructure in Iraq faces even more severe shortages of spare parts and treatment chemicals than the water treatment system. Because providing clean water is the highest priority, all available chlorine is used by water treatment plants, so none of the sewage plants in Iraq are able to treat the bacterial content of wastes. In addition, many parts have been cannibalized from sewage plants to keep water plants functioning. As a result, only the sewage plants in Baghdad collect and dispose of the household wastes at close to the pre-sanctions capacity. The two main plants in Baghdad, Rusdumiyya and Karkh, are now dumping 250 million cubic meters of untreated sewage per year into a tributary of the Tigris river, which flows through many of Iraq's major cities and towns.

The sewage treatment plant in Basrah receives a trickle of wastes because the distribution network has stopped functioning. Pumping stations do not work, pipes are ruptured and blocked, and only two of 20 suction tankers are operational. As a result, household wastes are deposited directly into ditches along the streets that were formerly used for sea water and ground water overflows. The team observed the same

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situation in cities throughout southern Iraq, including Kerbala, Najaf, Kut, and Amarah. In these cities, most household sewage is now dumped directly into ditches that run along streets and sidewalks, creating pools of sewage that often flow directly into people's homes. In Saddam City, a poor neighborhood in Baghdad with over one million residents, the team observed large areas that were submerged underwater. In Basrah, the team visited families who had to shovel sand into their homes to absorb the sewage, and built stone walkways to pass from one room to the other. Some families were raising the levels of their floors up to one meter, at a cost of 40,000 dinars, nearly the annual salary of a doctor. These unsanitary conditions are breeding grounds for water-borne disease and disease-carrying pests.

CHAPTER THREE: LEGAL ASSESSMENT OF UN SANCTIONS ON IRAQ

I. The Legal Framework

A. The Security Council After the Cold War

The United Nations Charter, established in the wake of the horrors of World War II, gives the Security Council broad powers to maintain international peace and security. However, East-West divisions throughout the Cold War prevented the Security Council from fulfilling this mandate. As a result, between 1945-90 the Security Council imposed multilateral sanctions only twice -- a trade embargo against Rhodesia in 1966, and an arms embargo against South Africa in 1977. Given this political paralysis, there was no practical need to define the legal limitations on Security Council action.

The end of the Cold War brought hopes for a "New World Order" based on universal respect for international law. It also breathed new life into the moribund Security Council, which in the absence of internal deadlock quickly became a dominant force in international affairs. Since 1990, the Security Council has imposed multilateral sanctions against eight different states, and occasionally authorized military force, most notably against Iraq in 1991.⁵⁶ Yet although these actions have often resulted in significant loss of civilian life and property, there still has been no attempt to establish the legal parameters within which the Council must operate.

Some commentators argue that the Security Council -- itself a product of the UN Charter -- can act "above" international law, as a law unto itself. Refuting this dangerous claim, Justice Weeramantry of the World Court points out that: "The history of the United Nations Charter ... corroborates the view that a clear limitation on the plenitude of the Security Council's powers is that those powers must be exercised in accordance with the well-established principles of international law".⁵⁷

The case of Iraq underscores the need to reaffirm and clearly define the legal constraints on the Security Council. It is clear that the Council's significant power to act in international affairs must be bounded by accepted principles of international law. For almost six years, the Security Council has maintained comprehensive sanctions without once referring to its legal obligation to act in accordance with human rights and humanitarian principles. Despite the deaths of hundreds of thousands of children, the international community has yet to address the crucial issue of the legality of Security Council sanctions on Iraq.

B. Defining the Legal Limits

The Security Council was established by, and derives its authority through, the United Nations Charter.⁵⁸ Of all the organs created by the Charter, only the Security Council is granted power to take specific enforcement actions to maintain peace and security. Chapter VII of the Charter explicitly empowers the Council to impose economic sanctions, and even military action, in response to threats to international

⁵⁶ The U.N. has imposed some form of multilateral sanctions against nations including Iraq, the former Yugoslavia, Libya, Somalia, Liberia, the Khmer Rouge-held areas of Cambodia, Rwanda, and Haiti. See Cortright & Lopez, ed., Economic Sanctions: Panacea or Peacebuilding in a Post-Cold War World? (1995), at 5.

⁵⁷ *Order with Regard to Request for the Indication of Provisional Measures in the Case Concerning Questions of Interpretations and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v. United States)*, 1992 I.C.J. 114, 31 I.L.M. 662, 694-696 (April 4, 1992) (Diss. Op. Weeramantry).

⁵⁸ Charter of the United Nations, signed June 26, 1945, entered into force Oct. 24, 1945, T.S. No. 993, (1969) [hereinafter UN Charter]. See Chapter III (establishing the Security Council) and Chapter V (defining its powers).

peace and security.⁵⁹ Furthermore, the UN Charter obliges member states to abide by Security Council resolutions even when they conflict with other treaties.⁶⁰

However, under both the Charter and international law, the Security Council's enforcement powers are limited by human rights and humanitarian standards. Article 24 of the Charter directs the Council "to act in accordance with the Purposes and Principles of the United Nations" in the use of its authority to maintain peace and security.⁶¹ Among the most fundamental Purposes and Principles listed in Article 1 is the promotion of human rights.⁶² Indeed, the Preamble to the Charter begins by stating its determination "to reaffirm faith in fundamental human rights and in the dignity and worth of the human person".⁶³

In the past fifty years, there has been near-universal acceptance of a growing body of human rights law -- from the Universal Declaration of Human Rights, unanimously endorsed by the UN General Assembly in 1948, to the Convention on the Rights of the Child, ratified in 1990 by almost every country in the world.⁶⁴ The Security Council is not technically party to these treaties in the manner of a ratifying state. However, each of these treaties represents an elaboration upon the UN Charter's original vision of human rights, making the treaty principles (if not the specific provisions) binding on the Security Council through Article 24.⁶⁵

The Security Council's human rights obligations are not identical to those of a state. On the one hand, the power and moral authority of UN member states acting collectively through the Security Council argues for holding the Council to a higher standard of human rights protection than individual states. On the other hand, when confronting threats to peace and security the Council may require some latitude of action beyond that allowed states. Yet by either standard, the Security Council is obligated to act in accordance with human rights and humanitarian principles when pursuing collective action. The contrary view, that the Security Council is free to violate these principles, ignores not only the Charter but also common sense. As a justice of the World Court recently noted: "one only has to state the proposition thus -- that a Security Council resolution may even require participation in genocide -- for its unacceptability to be apparent".⁶⁶

The precise limits imposed by the Charter and international law on Security Council actions have yet to be defined. Nor is it within the scope of this report to elaborate a complete set of guidelines. However, it is possible to derive a set of minimum legal duties in two broad categories:

- *procedural duties* to recognize explicitly its obligation to promote and respect core principles of human rights and humanitarian law, and to take concrete measures to monitor and hold itself accountable to these principles; and
- *substantive duties* to ensure that its activities do not result in violations of these principles, particularly among vulnerable populations such as children and women, which enjoy special protection under international law.

⁵⁹ *Ibid.* arts. 41, 42.

⁶⁰ *Ibid.* art. 103.

⁶¹ "In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations." *Ibid.* art 24(2).

⁶² "The Purposes of the United Nations are ... to achieve international cooperation in ... promoting and encouraging respect for human rights..." *Ibid.* art. 1(3). "The United Nations shall promote universal respect for, and observance of, human rights and fundamental freedoms for all..." *Ibid.* art. 55(c).

⁶³ *Ibid.* Preamble.

⁶⁴ Universal Declaration of Human Rights, adopted 10 Dec. 1948, G.A. Res. 217A (III), UN Doc. A/810, at 71 (1948); Convention on the Rights of the Child, adopted 20 Nov. 1989, entered into force 2 Sept. 1990, G.A. Res. 44/25, UN Doc. A/44/49, at 166 (1989).

⁶⁵ Every major human rights treaty derives from and grounds itself in the principles of the United Nations, as made explicit in its Preamble or Statement of Principles.

⁶⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))*, 1993 I.C.J. 325, 440 (Sep. Op. Lauterpacht).

These two sets of duties are only intended to establish a minimum threshold with which to assess the Security Council's compliance with its legal obligations.

II. Violations of the UN Charter and International Law

A. Procedural Violations

Procedural duties require only that the Security Council recognize, consider, and account for the impact of its activities on human rights. They are nonetheless an essential self-regulating safeguard against the commission of substantive violations. These duties are especially important given that no other institution has express authority through the UN Charter to review Security Council decisions. Several recent cases before the World Court have raised the issue of whether the Court has power to review Security Council actions (in the same way that the US Supreme Court reviews the constitutionality of acts by the President and Congress).⁶⁷ Until the Court decides this issue, the Council is left to judge the legality of its own actions. It is therefore critical that the Council recognize and hold itself accountable to the legal limits governing its conduct.

The Security Council has clearly violated these minimum procedural duties in the case of sanctions on Iraq. Notwithstanding frequent statements of concern regarding the humanitarian situation in Iraq, the Council has failed to acknowledge its own legal responsibility to protect the rights of Iraqi civilians suffering under sanctions.⁶⁸ While Council resolutions often invoke the authority of international law, and condemn Iraq for violating the human rights of its own citizens, they do not acknowledge that the Security Council is itself bound by international law and human rights.⁶⁹

The Security Council has also violated its procedural duties by failing to monitor the impact of sanctions on human rights. For six years, the Council has devoted considerable resources and personnel to five newly-created commissions to monitor the implementation of the Council's resolutions in such areas as inspecting Iraqi weapons programs, establishing the border with Kuwait, and locating Kuwaiti prisoners of war.⁷⁰ The work of these commissions has frequently been supported by actual or threatened military action. Yet the Security Council has not created a commission or devoted funding to monitor the human rights impact of sanctions, instead occasionally taking note of reports by other UN bodies and independent research groups. This omission is particularly glaring in light of clear evidence of the enormous suffering in Iraq. Shortly after the Gulf War, UN Secretary-General Javier Perez de Cuellar warned that: "the maintenance of food supply and consumption as well as the close monitoring of the nutritional and health status of the Iraqi population over the next few months are absolutely necessary to prevent full-scale famine and major human disasters developing in the country".⁷¹

It bears emphasizing that the Council remains accountable to human rights principles regardless of the conduct of the Iraqi government. The Council has sought to avoid any legal responsibility by blaming Saddam Hussein's government, in particular pointing to Iraq's refusal in 1991-92 to accept Resolutions 706 and 712 allowing a limited sale of oil to purchase humanitarian supplies. A 1992 official statement of the

⁶⁷ See, e.g., *Id.* for recent failed effort to win judicial review of Security Council decisions.

⁶⁸ The Security Council has issued various resolutions expressing concern for the civilian population, seeking more information, and proposing measures to ease the crisis, but it has never recognized a legal duty to prevent the crisis. See, e.g., SC Res. 666, SC Res. 687, SC Res. 706, and SC Res. 712.

⁶⁹ It is remarkable that a recent human rights study by a UN Special Rapporteur, which documents significant human rights violations by Iraq, including the failure to protect people's right to food, goes so far as to disclaim any legal responsibility on the part of the Security Council. *Report on the situation of human rights in Iraq, submitted by Special Rapporteur, Mr. Max van der Stoep*, E/CN.4/1996/61 (4 March 1996)

⁷⁰ The UN commissions were established pursuant to the SC Res. 687. They are: The United Nations Iraq-Kuwait Observation Mission (UNIKOM), The Iraq-Kuwait Boundary Demarcation Commission, The United Nations Compensation Commission, and The Security Council's Sanctions Committee.

⁷¹ S-G Report, at 15. In SC Res. 706 and SC Res. 712, the Council offered an "oil for food" deal that would have fallen far short of the level of the support the Security General indicated would be necessary. When the Iraqi government refused, the Security Council offered no alternative relief to the population.

President of the Security Council is indicative: “The Government of Iraq, by acting in this way, is foregoing the possibility of meeting the essential needs of its civilian population and therefore bears the full responsibility for their humanitarian problems”.⁷²

However, Saddam Hussein’s intransigence cannot justify violations by the Council. As a matter of fundamental principle, human rights are based on the inherent dignity and worth of every human person, and are owed directly to individuals. These rights are not forfeited because of a government’s misconduct, particularly when citizens have no voice in the decisions of such government.⁷³ Iraq’s failure to comply with Security Council resolutions therefore does not give the Security Council license to disavow its independent obligations to respect the human rights of the Iraqi civilians.

The Security Council’s failure to acknowledge its legal obligations to the people of Iraq has left the dangerous impression -- completely at odds with the UN Charter’s proclamation of “faith in fundamental human rights and in the dignity and worth of the human person” -- that the Council is at liberty to impose collective punishment on a population for the recalcitrance of its leader. The Security Council has bolstered this impression by failing to provide guidelines for imposing sanctions and for monitoring their impact. Through these acts and omissions, the Security Council has placed itself beyond legal accountability, in violation of its minimum procedural duties under the UN Charter and international law.

B. Substantive Violations

Assessing the substantive legality of Security Council sanctions against Iraq is difficult in the absence of a body of precedents to define violations in this uncharted area of law. Much of the difficulty arises from the fact that the Security Council is a unique institution with authority and responsibilities that differ from those of individual states. When responding to a threat to peace and security, the Council is operating in a gray area between war and peace, making it uncertain whether the Council should be accountable to the peace-time legal regime of human rights or the war-time regime of humanitarian law (also called the laws of war). On the one hand, sanctions on Iraq have been maintained after the technical state of war ceased with Resolution 687. On the other hand, the Council’s responsibility to maintain peace and security and its position in relation to the Iraqi government and population – as an outside force exerting pressure on the country -- argue for a humanitarian law framework.

While both legal regimes are grounded in humanitarian norms, they offer different levels of protection to the individual. The laws of war permit belligerents to inflict collateral civilian casualties when attacking legitimate military targets, provided that the harm to civilians is not disproportionate to the value of the military target.⁷⁴ The human rights regime, on the other hand, provides strict protection to civilian life, health, and property in all circumstances short of war. Because the Council is obliged to promote human rights in all its activities and because the actual level of obligation must fall somewhere in between the human rights and the humanitarian law standards, this report assesses the Council’s actions against the core principles underlying both regimes -- principles rooted in the original purpose of the United Nations.

1. Human Rights Law

The foreseeable and avoidable deaths of hundreds of thousands of children clearly implicate a number of fundamental human rights. Most important is the right to life, considered by the UN Human Rights Committee to be “the supreme right from which no derogation is permitted even in time of public emergency”.⁷⁵ The tragic loss of life in Iraq due to sanctions constitutes a massive violation of this most

⁷² *Statement by the President of the Council, S/23517* (5 February 1992) (italics added).

⁷³ See Meron, Human Rights and Humanitarian Norms as Customary Law (1989), at 238-240.

⁷⁴ The legal regime governing war consists of both humanitarian law (based on the Geneva Conventions) and the laws of war (based on the Hague Conventions and recent Protocols to the Geneva Conventions). The term “laws of war” is used in this report to encompass both regimes.

⁷⁵ UN Human Rights Committee, *General Comment 6/16* (July 27, 1982). Some argue that the right to life is a peremptory norm of international law (*i.e.*, a norm of the highest importance from which no derogation is permitted). See, *e.g.*, Case 9647, Inter-Am. C.H.R. 147, 169 OEA/ser.L/V/II.71, doc. 9 rev. 1 (1987); Parker

fundamental human right. Sanctions have also contributed to violations of the rights to health and to an adequate standard of living, guaranteed by the Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights, and other international treaties.⁷⁶

It is significant that children have suffered disproportionately from sanctions. Under human rights law, children are considered uniquely vulnerable and are granted special protection. More countries have ratified the Convention on the Rights of the Child than any other human rights treaty in history, including all permanent members of the Security Council.⁷⁷ Among its provisions, the Convention specifically recognizes that “every child has the inherent right to life” and calls on all states “to ensure to the maximum extent possible the survival and development of the child” and “to take appropriate measures to diminish infant and child mortality.”⁷⁸ It is hard to think of a more grave breach of child rights in modern history than the suffering and death of hundreds of thousands of children under the age of five caused by a political dispute between “their” government and the international community.

The Security Council shoulders a large measure of responsibility for these violations by maintaining sanctions without taking strong measures to prevent this suffering. However, the Security Council, and particularly the US representative, have argued that Saddam Hussein and his government bear sole responsibility for civilian suffering, and therefore for human rights violations. The Council blames Iraq for (i) refusing to comply with Security Council cease-fire resolutions, in particular resolutions that authorize Iraq to sell a limited amount of oil and use the proceeds to buy food and medicine,⁷⁹ and (ii) spending scarce resources on luxury items for Saddam Hussein rather than on food and medicine for the needy population.⁸⁰

It is important to examine both of these claims carefully before assigning responsibility for human rights violations resulting from sanctions. It is true that Iraqi children would not be sick and hungry if their government complied with all conditions for lifting the sanctions. But as pointed out in the previous section, this is irrelevant to the Security Council’s independent human rights duties owed to the Iraqi people. At a minimum, the Council’s obligation to promote human rights requires that it take reasonable steps to ensure that its activities do not seriously harm those rights. In this case, in spite of the massive civilian toll, the Council has refused to entertain less drastic alternatives to maintaining comprehensive sanctions, or to take effective measures to mitigate their impact on civilians (see recommendations for possible alternatives). There can be no legal justification for the Council to insist on a uniquely severe sanctions regime that punishes innocent members of the world community.

The Security Council’s second argument may mitigate the degree (but not the fact) of its responsibility for human rights violations. A human rights analysis of the Council’s conduct must take into account the shared responsibility of the Iraqi government, but the Council remains responsible to the extent that it contributes to the denial rather than the promotion of human rights. In this case, it is clear that sanctions constitute the dominant factor in the deaths of hundred of thousands of civilians. Sanctions have

& Neylon, *Jus Cogens: Compelling the Law of Human Rights*, 12 *Hastings Int’l & Comp. Law Review* 411, 431 (1989).

⁷⁶ Universal Declaration of Human Rights, Res. 217A (III), UN Doc. A/810, at 71 (1948), art. 25; International Covenant on Economic, Social and Cultural Rights, adopted Dec. 19, 1966, entered into force Jan. 3, 1976, G.A. Res. 2200 (XXI), arts. 11, 12.

⁷⁷ International Convention on the Rights of the Child, opened for signature Jan. 26, 1990, entered into force Sept. 2, 1990, G.A. Res. 44/25 28, I.L.M. 1448, 1456 (1989). 187 countries are party to the Convention.

⁷⁸ *Ibid.* arts. 6, 24. “States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health...” and state parties “shall pursue full implementation of this right and, in particular, shall take appropriate measures ... to diminish infant and child mortality.” *Id.* The Security Council itself has recognized the particular vulnerability and corresponding rights of children. See SC Res. 666 art. 4.

⁷⁹ SC Res. 706, SC Res. 712, and SC Res. 986. It is worth noting that these resolutions would not have allowed for sufficient oil sales to meet even minimum needs after deductions for compensation to Kuwait and UN expenses. Res. 706 meets just 60% of minimum needs according to the Secretary-General’s 1991 Report, S-G Report. SC Res. 986 will not provide the minimum food needs set forth in the FAO’s 1995 Report, FAO Report 1995.

⁸⁰ *Id.*

reduced Iraq's GDP to less than 10% of its previous level. Only a tiny fraction of these reduced revenues end up in the government's hands as hard currency. Yet Iraq needs billion in hard currency to pay for sufficient quantities of imported food, medicine and other essentials. Furthermore, throughout sanctions the Iraqi government has maintained an efficient and equitable public rationing system at considerable expense. This is consistent with the fact that, prior to sanctions, Iraq maintained the most generous public welfare program in the Arab world. Furthermore, the argument that Iraq spends excessive sums on presidential palaces and yachts not only appears to be exaggerated for political purposes, but also ignores the fact that these projects are paid for in Iraqi dinars, and therefore do not divert any hard currency from the purchase of food and medicine.⁸¹

2. Humanitarian Law

Even under the more permissive framework of humanitarian law, Security Council sanctions on Iraq violate well-established legal norms. The basic principles undergirding the laws of war are those of distinction and proportionality. Under the principle of distinction, belligerents are required to distinguish between civilians and combatants at all times and to direct attacks only against military targets.⁸² This is the fundamental principle upon which the entire humanitarian foundation of the laws of war is based. The corollary principle of proportionality is designed to ensure that attacks against military targets do not cause excessive civilian damage.⁸³ The Geneva Conventions define proportionality as prohibiting any "attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects... which would be excessive in relation to the concrete and direct military advantage anticipated".⁸⁴

Imposing comprehensive sanctions that cause total economic collapse and the deaths of hundreds of thousands of civilians appears on its face to violate the principle of distinction. A recent protocol to the Geneva Convention explicitly outlaws the use of starvation as a method of warfare, stating that "in no event shall actions ... be taken which may be expected to leave the civilian population with such inadequate food or water as to cause its starvation".⁸⁵ The critical issue under the principle of distinction is whether the sanctions are targeted at the entire population as a means to influence the regime -- a clear violation -- or at the regime, causing collateral damage to civilians.

Even granting for the sake of argument that sanctions are directed against the regime rather than the people, the Security Council must still demonstrate that there has not been a disproportionate impact on civilians. Proportionality is a malleable and subjective standard, easily prone to manipulation by belligerents to justify civilian casualties. Nevertheless, the authoritative legal commentary on the laws of war sets out guidelines for interpretation: "A remote [military] advantage to be gained at some unknown time in the future would not be a proper consideration to weigh against civilian loss... The advantage concerned should be substantial and relatively close... There can be no question of creating conditions conducive to surrender by means of attacks which incidentally harm the civilian population".⁸⁶

The advantage gained over the course of five years of comprehensive sanctions, measured by Iraqi compliance with the cease-fire resolutions, has been extremely remote in comparison with the enormous

⁸¹ See *infra* for information on the \$1 billion figure. In addition, Saudi sources report that the yacht referred to by Ambassador Albright was given as a gift from King Fahd to President Saddam Hussein at the end of 1985, and was returned in late 1988. See *Al-Quds Al-Araby* (May 14, 1996).

⁸² United Nations General Assembly, *Respect for Human Rights in Armed Conflict*, UNGA Res. 2444, 23 UN GAOR Supp. (No. 18) (1968), at 164.

⁸³ Proportionality is based on military necessity; indirect harms to civilians are justified on the basis of the extreme need to counter an immediate military threat. The justification is not extended to non-immediate threats. See e.g. Bothe, Michael, Partsch, & Solf, *New Rules for Victims of Armed Conflict* (1982), at 360-366.

⁸⁴ Protocol Additional to the Geneva Convention of 12 Aug. 1949, and Relating to the Protections of Victims of International Armed Conflicts (Protocol I) of June 8, 1977, opened for signature Dec. 12, 1977, U.N. Doc. A/32/144, Annex I, II (1977), reprinted in 16 I.L.M 1391 (1977) [hereinafter Protocol I], art. 51 (5)(b).

⁸⁵ *Ibid.* art. 54.

⁸⁶ *Id.*

civilian casualties.⁸⁷ While the goals of sanctions, such as eliminating Iraq's unconventional weapons to ensure peace and security in the region, are unquestionably of great importance, it is unclear how much progress toward these goals can be attributed directly to comprehensive sanctions. Iraq has often revealed valuable information on weapons program in response to high-level defections or threatened military strikes. On the other hand, the magnitude of the death toll claimed by sanctions-related hunger and disease in Iraq has been documented since the beginning of the Gulf War. The magnitude of this tragedy for Iraqi children stands out even against the bloody standards of the twentieth century. Far more Iraqi children under the age of five have died as a result of sanctions than civilians and combatants combined from either the scourge of ethnic cleansing in the former Yugoslavia or the atomic bombs in Japan. Under these circumstances, it seems clear that Security Council sanctions on Iraq have violated the fundamental principles of humanitarian law.

⁸⁷ When sanctions were first imposed, William Webster, Director of the CIA, stated: "Our 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. *Hearings before the Committee on Armed Services, US House of Representatives*, (5 December 1990).

CONCLUSION AND RECOMMENDATIONS

After the conclusion of the Gulf War, the Security Council decided to maintain a crippling sanctions regime on Iraq to force further concessions from the government. This decision was made with no explicit recognition of the Security Council's legal obligation to the Iraqi population and no framework for measuring the impacts against the policy objectives. Despite incontrovertible evidence that sanctions were targeting the weakest members of society, killing hundreds of thousands of children, the world sat quietly every two months as the Security Council rubber-stamped the continuation of sanctions.

The case of Iraq illustrates why sanctions are not always a humane alternative to war. Public opinion would not tolerate a UN war against Iraq that killed over 500,000 Iraqi soldiers without a single UN casualty, regardless of the political objectives for going to war. Humanitarian law would also not tolerate such a war. How then can the international community and the Security Council view the deaths of so many children due to sanctions with indifference and inaction? How can the evil deeds of one leader -- even an entire government -- be used to justify such an unprecedented violation of human rights?

Perhaps most troubling to international conscience is that the Security Council has never seriously attempted to pursue alternatives to comprehensive sanctions. The food-for-oil deal rejected by Iraq in 1991, and the deal accepted in 1996, are inadequate responses to a tragedy of this magnitude, especially when compared to the resources that the Security Council has devoted to other issues in Iraq. When confronted with Iraqi intransigence over the UN's right to inspect weapons programs, for example, the Council went so far as to authorize military strikes. Why the lack of resolve and action in protecting Iraqi children from starvation due to the sanctions?

It is long overdue for the Security Council to hold itself accountable to its human rights obligations and to start examining alternatives to sanctions that might constrain a dictator without killing the weakest members of the population. Beyond the issues raised by international law, the moral and political case for imposing such massive costs on innocent civilians is extremely suspect -- it is hard to see how long-term peace and security can be restored through a strictly punitive policy.

CESR believes that less drastic means are available to constrain the Iraqi regime without imposing the costs on the most vulnerable sectors of society. To safeguard the human rights of the Iraqi people, and the civilian populations of all countries targeted by sanctions, CESR calls on the Security Council and the international community to implement the following measures:

1. *Modify the oil-for-food deal under Resolution 986.* The current oil-for-food mechanism provides only a small fraction of civilian needs. Given that the UN controls the bank account and monitors distribution of supplies, there is no justification for preventing Iraq from selling as much oil as is necessary to satisfy civilian needs. In the alternative, the current limited amount of \$4 billion per year should not include deductions for war reparations or UN expenses, but instead should be dedicated exclusively to addressing the civilian emergency in Iraq.
2. *Modify Sanctions Committee procedures for dual-use items.* Certain of the most pressing needs in Iraq arise from the lack of imported items that may serve both civilian and military purposes, such as chlorine for water purification. The Sanctions Committee should be authorized to grant standing exemptions for dual-use items that are essential for civilian needs, relying on relief agencies already in Iraq to monitor these items to ensure proper use, as is already done by UNICEF with equipment for water and sewage plants.
3. *Modify sanctions to target the Iraqi government and military.* A key assumption underlying the sanctions on Iraq is that pressure applied to a civilian population will ultimately affect the leadership. The continuation of sanctions for over five years, with devastating humanitarian impact, calls that assumption into question on practical, moral and legal grounds. Sanctions, like other punitive regimes, should be applied to responsible parties, and sanctions on Iraq should therefore be modified to target the

Iraqi government and military through an arms embargo and diplomatic sanctions, pending compliance with conditions for lifting the sanctions.

4. *Establish clear requirements for compliance in each sanctions regime.* A fundamental problem in the application of sanctions on Iraq has been the lack of clearly-defined objectives and steps that Iraq could take to comply with the cease-fire resolutions. In present and future cases of sanctions, the Security Council should detail the requirements for compliance, specifying the aspect of sanctions to be removed at each step of compliance.
5. *Articulate and enforce legal standards for the application of sanctions.* The United Nations should convene a panel of independent international experts to codify relevant principles of human rights and humanitarian law applicable to sanctions imposed by the Security Council under Chapter VII of the UN Charter. The UN should also create an independent mechanism to monitor the human rights and humanitarian impacts of sanctions whenever they are imposed, and ensure that these legal standards are not violated.

