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I. INTRODUCTION

On May 22, 2003, the United Nations Security Council voted 14-0 to adopt a US-sponsored resolution advocating the formal lifting of UN economic sanctions against Iraq. These measures, imposed with US sponsorship when Iraq invaded Kuwait in August 1990, placed restrictions on Iraq's oil imports and put the expenditure of its oil revenues under UN control. Removal of these sanction measures was conditioned on the destruction by Saddam Hussein of all weapons of mass destruction, a situation rendered moot by the US military victory and occupation of Iraq during March-April 2003. The effort by the Bush administration to end the UN sanctions regime was intended to allow Iraq's extensive oil resources to be used to foster and facilitate that country's economic, political, and social recovery from the tyrannical regime of Saddam Hussein, as well as to finance reconstruction from the 2003 Iraqi war.¹

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¹ Security Council Res No 1483, UN Doc No S/RES/1483 (2003). This resolution transfers legal control over Iraq's oil industry from the United Nations and Iraq to the United States and its allies. The proceeds will be used to finance Iraq's reconstruction, the costs of government administration, and completion of Iraq's disarmament. Oil revenues will be deposited in the Development Fund of Iraq and will be immune from claims by foreign creditors. The resolution also extends political legitimacy to US rule by providing for a US-administered Coalition Provisional Authority that will direct international reconstruction aid from international financial institutions and other governments. The United Nations is given a formal role through the Secretary General's appointment of a special representative to supervise UN relief and reconstruction efforts and participate in the political transition to an Iraqi government. Syria, the only Arab member on the Security Council this session, did not vote. See Colum Lynch, Security Council Ends Iraq Sanctions; U.S. Given Control over Economy, Wash Post A16 (May 23, 2003); Colum Lynch, U.S. to Propose Broader Control of Iraqi Oil, Funds; Draft Resolution Also Would End Decade of U.N. Trade Sanctions, Wash Post A1 (May 9,
The UN’s thirteen-year-old sanctions regime against Iraq marked a watershed development in the application of economic coercion by the United Nations. These measures—the most extensive and most prolonged ever applied by the United Nations—became the most economically devastating on their targeted citizenry, as well as the most politically controversial among human rights advocates. Given these circumstances, it is useful to assess both the impact of these sanctions on the economy and society of Iraq and the lawfulness of Security Council sanctions application in light of international humanitarian law. From this analysis we should be able to gauge what implications flow from the Iraq sanctions operation for future UN sanctions as instruments of UN peacekeeping. To these ends, Part II of this article briefly examines the nature, means, and processes of UN sanctions operations. The Iraqi sanctions experience is then assessed in Part III, to determine its economic and social impacts on the people and government of Iraq. Part IV critically distills and evaluates the lessons to be drawn from the Iraqi sanctions experience. Finally, Part V proffers some conclusions for critical reflection.

II. UN SANCTIONS IN PERSPECTIVE

A. GENERAL OBSERVATIONS

Sanctions adopted by the Security Council are instruments of international politics. They are neither trade policies nor transnational business practices. UN sanctions entail a combination of mandatory boycotts where states refuse to buy goods from the target state and embargoes where states refuse to sell goods to a target state. The Security Council directs sanctions operations through special sanctions committees; the entire UN membership imposes sanctions against a target government. Such multilateral economic injunctions operate between states, rather than between individuals, and they are ordered by the UN Security Council against the will of the target state. The ambition of such sanctions is unmistakable: to prevent the exchange of goods, services, or persons across national borders, thereby isolating the target state from international commerce.

While the word “sanction” is sometimes applied to various commercial policies between states, UN sanctions differ from standard trade policies in that they amount to forceful measures that are internationally legitimized. Unlike diplomatic negotiations, Security Council-mandated measures against states are


not left to voluntary or consensual agreement among member states. A declaration by the Security Council of a sanctions decision legally obligates all member governments of the UN to impose and enforce the stipulated restrictive measures against a targeted state. In this regard, UN sanctions more closely resemble mandatory economic coercion than tools of international trade or diplomacy. Moreover, these sanctions operations should not be confused with international trade wars, in which nations raise or lower prices for exchanged goods in reprisal to punish an adversary. Nor are the sanctions a form of economic warfare, wherein the entire economy or designated economic sectors of a state are targeted for destruction in order to achieve military aims. Put tersely, UN sanctions are coercive measures, which are intended to convince or compel a state to desist from engaging in acts violating international law. They are penalties imposed by the Security Council as the designated consequence of some state’s failure to observe international standards or legal obligations. UN sanctions thus entail a designated economic means to a preferred end, namely the deviant state’s return to acceptable behavior.

B. LEGAL CONSIDERATIONS

The lawful authority and political legitimacy of contemporary economic sanctions are strengthened when they are formally institutionalized through the framework of the UN. When framing the UN Charter, its founders paid special attention to the use of economic sanctions as part of a more sophisticated system of collective security. The aims of the organization, detailed in Articles 1 and 2, stress the maintenance of international peace and security and recognize the sovereign equality of member states. In Chapter VI, the Charter conveys the obligation to settle disputes peacefully and outlines appropriate procedures to that end.

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Article 1 of the United Nations Charter provides in relevant part that:

The purposes of the United Nations are:

1. To maintain international peace and security and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace . . . .

Article 2 provides in relevant part that:

1. The Organization is based on the principle of the sovereign equality of all its Members.

All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.
Article 24 delegates chief responsibility for maintaining international peace and security to the Security Council.¹ Fifteen members comprise this organ, of which five are permanent members with a veto power (namely China, France, Russia, the United Kingdom, and the United States) and ten other rotating members. Decisions of the Security Council bind member states of the UN and carry the full weight of international law in accordance with Article 25.²

Within the UN Charter, the legal teeth of sanctions are rooted in Chapter VII, Articles 39 through 42. The Security Council, by virtue of Article 39, "determine[s] the existence of any threat to the peace, breach of the peace, or act of aggression" and may enact provisional measures under Article 40 while examining the situation further and before implementing more severe actions. Article 41 authorizes the Council to use economic sanctions, expressed as the "complete or partial interruption of economic relations," and to use similar measures "not involving the use of armed force."³ Should provisional measures prove ineffective, the Security Council may decide upon appropriate steps under Article 41 to give effect to its decisions. Article 42 also allows the Security Council to authorize "such action by air, sea, or land forces as may be necessary" that could be carried out by member forces should measures taken under Article 41 prove to be unsuccessful.⁴

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¹ Article 24 provides in relevant part that:
1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

² In full, Article 25 provides: "The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter." Due to the political paralysis of the Security Council during the Cold War, however, the General Assembly occasionally attempted to address threats to the peace and to enact sanctions through passage of a resolution. Nevertheless, such resolutions were strictly recommendations and did not obligate members in the manner of a Security Council decision.

³ In full, Article 41 provides:
The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

⁴ Article 42 provides in full that:
Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.
C. UN SANCTIONS CASES


12 On August 1, 1990, Iraqi tanks and troops invaded and quickly conquered its small but oil-rich neighbor, Kuwait. In response to the urgent request of Kuwait, the Security Council convened on August 2, 1990, to consider the invasion of that state by Iraqi forces. The Council adopted Resolution 660 on August 2, citing its authority under Articles 39 and 40 and announcing its determination that a breach of international peace had occurred. Security Council Res No 660, UN Doc No S/RES/660 (1990). This resolution condemned the invasion, called for the immediate withdrawal of Iraqi troops from Kuwait, and announced that the Council would meet as necessary to ensure compliance with that mandate. This action by the Security Council initiated a protracted series of at least sixteen resolutions aimed at condemning various policies and activities by Iraq and at taking measures to compel that government to cease, desist, and amend its transgressions against Kuwait, and later, human rights abuses against its own citizens. Taken in tandem, these Security Council resolutions established the legal mandate through which international economic sanctions were prosecuted against Iraq. The Council subsequently adopted Resolution 661 (imposing comprehensive economic sanctions against Iraq and Kuwait under Chapter VII of the Charter). See Security Council Res No 661, UN Doc No S/RES/661 (1990).
III. UN SANCTIONS AGAINST IRAQ

The general theory underpinning UN sanctions against Iraq is uncomplicated and straightforward. The Security Council mandated international measures of denial and deprivation to put economic pressure on the population of Iraq because it was claimed that their government possessed weapons of mass destruction. Such exploitation of widespread civilian suffering is done to inflict political pressure on the government. That is, feeling increasingly deprived and angry, the people in Iraq will pressure their rulers to change the objectionable policy. If the policy is not changed, then the people are expected to rise up and throw out their government. Notwithstanding its ready appeal—victory for the UN in securing policy change in Iraq without engaging in external violence, armed conflict, or external military intervention—such a scenario proved overly simplistic. It cannot succeed in a state controlled by fear and security police, as was the case under Saddam Hussein’s regime.

The sanctions instigated on Iraq were the strongest, most salient UN embargo actions ever imposed against a state. UN sanctions against Iraq were motivated by Saddam Hussein’s military invasion and unlawful occupation of Kuwait in August 1990. On August 6, 1990, the UN Security Council imposed, by Resolution 661, comprehensive sanctions against Iraq.22 The sanctions operation against Iraq functioned in a deliberately premeditated and coordinated manner. That same resolution created a special Sanctions Committee, comprised of all fifteen members of the Security Council. The principal purpose of this body was to direct and coordinate the sanctions regime, as authorized by the Security Council. Since 1990, the Security Council has been persistently seized with adapting the sanctions regime to changing circumstances in Iraq and has adopted no less than sixty-five legally binding resolutions on the matter.23

The Multinational (Maritime) Interception Force militarily enforces the Security Council’s sanctions, while private companies and various UN agencies administratively enforce the sanctions.24 The sanctions against Iraq were

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23 Spanning thirteen years, the Security Council adopted at least sixty-five measures that directly relate to the sanctions operation against Iraq. See Security Council Resolutions Concerning the Situation between Iraq and Kuwait, available online at <http://www.un.org/Docs/sc/committtees/IraqKuwait/IraqResolutionsEng.htm> (visited Sept 17, 2003). These measures comprehensively addressed what goods the sanctions prohibited, repeatedly extended the Oil-for-Food program, and made frequent alterations to the mechanics of the sanctions.
24 One of these private enforcement agencies is Cotecna Inspection SA. Incorporated in 1975 in Geneva, Cotecna initially specialized in the inspection of a variety of goods on behalf of private traders and governmental entities involved in international trade. Since then, Cotecna has specialized in government-mandated services that have aimed to reduce the appeal for importers of evading foreign exchange and increasing customs revenue. Worldwide, Cotecna operates in partnership with OMI International Ltd, a Japan-based inspection company. Currently, the Cotecna Group has a combined workforce of about 4,000 employees in 150
economic in kind (insofar as they interdict the free exchange of goods) and comprehensive in scope (insofar as the entirety of imports to and exports from Iraq fall within its purview). Irrespective of the range of humanitarian loopholes created within the UN sanctions action against Iraq, complete fiscal and administrative control over Iraq's import/export mechanism remains with that Security Council Sanctions Committee.25

Of all United Nations sanctions operations, the one imposed against Iraq proved to be the most economically destructive and devastating on its targeted society. The UN sanctions regime for Iraq evolved in a resolute, premeditated fashion through four prominent periods. The first period, which extended from August 1990 until April 1997, entailed a phase during which all Iraqi imports, save food and medicine, and all Iraqi exports were banned from international commerce.26 During this initial period the UN sanctions operation inflicted the greatest devastation on the Iraqi people at large. A shift in the sanctions operation appeared in May 1996, when the Government of Iraq and the Security Council agreed on the Oil-for-Food program (“OFF”). This program began functioning in April 1997 and marked the second major period in the Iraqi sanctions action. It not only permitted the Security Council to supervise Iraq’s importation of various humanitarian goods but also required that body’s certification of payment for those imports from an escrow account containing Iraqi oil revenues administered by the Security Council. The Oil-for-Food program effectively barred all civilian items with potential military use, that is, “dual-use” items.27 Nonetheless, as worldwide criticism against the sanctions
mounted throughout the 1990s, new strategies for applying UN sanctions were devised. Consequently, a change in the nature of the Iraqi sanctions operation became driven by the notion of “smart” sanctions. These “smart sanctions” targeted military-related facets of the regime itself, instead of Iraq’s economy at large. The intent here was to spare the general population the economic deprivation caused by the sanctions. Contrary to its purported idea, however, scant “smart” targeting occurred. From December 2000 to February 2001, professed “fast-track” lists were drawn up that guaranteed automatic approval for certain items for housing, education, electricity, water, and sanitation. In June 2001, the Security Council failed to adopt a British-American proposal for implementing UN “smart sanctions.” Nevertheless, following al Qaeda’s terrorist attacks on September 11, 2001, resistance to smart sanctions diminished. In its Resolution 1382 in November 2001, the Security Council adopted a long list of forbidden items, as well as a draft recommendation for an even longer list. This also marked the beginning of the third period of Iraqi sanctions. In May 2002, the Security Council adopted Resolution 1409, which fundamentally reshaped the character of UN sanctions against Iraq. This resolution lifted restrictions on shipping civilian goods to Iraq. While the arms embargo remained in place, a new technology transfer control system was established. The focus of sanctions thus moved from prohibiting civilian trade

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28 If the UN were to resort to “smart sanctions,” sanctions would be focused on weapons and military-related goods rather than general trade. A system of smart sanctions depends on continued UN control of Iraqi oil revenues and strict monitoring of military-related imports. Trade in nonmilitary, non-dual-use commercial goods would be legalized, while restrictions on government finances and weapons-related imports would be tightened. Purportedly, such a system would put serious limitations on Iraq’s ability to redevelop its conventional weapons capacity, as well as weapons of mass destruction, while relaxing unnecessary restrictions on Iraqi civilians and nonmilitary commercial trade.

29 In this case of “smart sanctions,” Russia threatened to veto the proposals, preferring instead to lift economic sanctions and maintain only arms-related sanctions. France introduced its own draft, which was much more lenient on major issues, like foreign investment and travel restrictions. In a draft to the Security Council Working Group on Sanctions, France also suggested that the continuation of sanctions, not the lifting, needed Security Council approval with significant implications for the permanent five members with veto power. Agreement seemed unlikely until after September 11th. See Campaign against Sanctions on Iraq, Working Group on Sanctions—Draft Report, 14 Feb 2001, available online at <http://www.casi.org.uk/info/scwgs140201.html> (visited Sept 17, 2003).


to banning imports into Iraq of weapons and military-related materiel. The resolution approved a Goods Review List ("GRL") of specified dual-use items that would be subject to UN review and approval, as detailed in an annex of procedures appended to the resolution. These review procedures would apply only to designated dual-use technologies and goods with potential weapons application. All other civilian goods would be allowed to flow freely into Iraq without monitoring or preliminary approval. Notwithstanding such intentions, events overtook the ability of the Iraq Sanctions Committee to assess how effectively these UN "smart sanctions" functioned. Less than a year after the GRL was adopted, the United States invaded and seized control of Iraq. Thus, the third period of sanctions against Iraq ended with the removal of Saddam Hussein's regime in April 2003. The fourth period involved efforts by the United States and United Kingdom in the Security Council to lift the sanctions. Removal of sanctions allowed the United States to control Iraqi oil sales and production and to facilitate the Iraqi people's ability to reconstruct their society in the aftermath of the US military operation that removed Saddam Hussein's regime. UN sanctions were lifted on May 22, 2003, by Security Council resolution 1483.32

There is little doubt that persistent UN sanctions against Iraq hamstrung the ability of Saddam Hussein's regime to revive its military and weapons capability. Although sanctions were less than successful in convincing the Baghdad government to comply with mandates in the Security Council's resolutions, they were effective as a means of military containment. Sanctions precluded the Baghdad government from securing access to its vast oil revenues. The UN, not Saddam Hussein's government, controlled nearly all the revenues derived from Iraqi oil sales. Since sanctions began in August 1990, estimates suggest that Iraq was denied more than $150 billion in oil revenues.33 This denial precluded Iraq from purchasing sufficient weapons and military-related equipment to rebuild and modernize its armed forces. The aggregate deficit in arms imports for Iraq since 1990 is believed to exceed $50 billion.34 This amount is what Iraq likely would have spent on imported weapons if it had continued to buy arms as it did during the 1980s. Although Iraq gained some unrestricted revenue through smuggling and kickbacks (estimated at between

$1.5 and $3 billion annually), this income is not sufficient to fund a large-scale military development program. Consequently, Iraq's ability to produce weapons of mass destruction and develop the means to deliver them was severely impaired. Notwithstanding this positive security outcome, the fact persists that UN sanctions inflicted pervasive, devastating impacts on Iraqi society, as harsh social, economic, and physiological deprivations and dislocations plagued the country, especially harming innocent civilians.

Following the initial imposition of sanctions against Iraq, many commentators believed that such comprehensive economic measures were innovative and nonviolent tools of international coercion. Sanctions supplied an ethical foreign policy instrument for pressuring Baghdad's government short of military conflict. Throughout the 1990s, however, UN sanctions began to bite deeper into Iraqi society. It became apparent that large numbers of innocent civilians in Iraq were suffering from acute deprivations of food and medicine, as well as from the wholesale disruption of the national economy. This situation produced pervasive impoverishment throughout Iraq's society, decreased the quality of water treatment and utilities, and contributed to the general deterioration of the public health infrastructure. In short, measures that initially were intended as a means to apply nonviolent economic pressure on the Iraqi government deteriorated into an aggravated humanitarian crisis for nearly all of Iraq's society.

Human rights groups alleged throughout the 1990s that the human cost of UN sanctions against Iraq was excruciatingly excessive. Considerable merit resides in these accusations, as the sanctions impacted surprisingly hard on the civilian population. Various independent studies done during the mid-1990s suggest that UN sanctions perpetrated widespread and severe human deprivations that most severely affected the very groups most at risk in Iraqi society. Throughout the early 1990s, food shortages in Iraq became acute, which prompted numerous independent and UN-affiliated studies and reports to assess the crisis. For example, in 1996, the Food and Agriculture Organization ("FAO") published a study that documented the lack of available foodstuffs and

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35 See Raad Alkadari, The Iraqi Klondike: Oil and Regional Trade, 220 Middle E Rep at 5 (Fall 2001), available online at <http://www.merip.org/mer/mer220/220_alkadiri.html> (visited Sept 17, 2003); Carola Hoyos, Oil Smugglers Keep Cash Flowing Back to Saddam; Carola Hoyos Examines a Case Study of How Companies, Wittingly or Unwittingly, Are Flouting UN Sanctions against Iraq, Fin Times 9 (Jan 17, 2002).

the impact on Iraqi children. The report reached the startling conclusions that
the infant mortality rate for Iraq had doubled during the period of the sanctions
and that the mortality rate of children under five years old had increased sixfold
since 1990.\textsuperscript{37} Another study in 1996 by the Center for Economic and Social
Rights ("CESR") calculated that at least 567,000 children died as a result of
sanctions.\textsuperscript{38} In 1997, the UN Committee on Economic, Social and Cultural
Rights released a report that criticized the Security Council for not adequately
taking into account its responsibilities under economic, social, and cultural rights
law. From 1990 to 1997, the report alleges that UN sanctions "often cause[d]
significant disruption in the distribution of food, pharmaceuticals and sanitation
supplies, jeopardize[d] the quality of food and the availability of clean drinking
water, severely interfere[d] with the functioning of basic health and education
systems, and undermine[d] the right to work."\textsuperscript{39}

The sanctions in Iraq hit hardest on those groups most vulnerable, namely
children, women, the sick, and the poorer sectors of society. Iraq’s economy
during the 1990s fell into shambles as stagnation set in and became complicated
by conditions of higher unemployment, increased inflation and shortages of
food, medicine, and consumer goods.\textsuperscript{40} A Security Council-appointed panel
summarized in 1999 the health and sanitation situation as follows:

In marked contrast to the prevailing situation prior to the events of 1990–
1991, the infant mortality rates in Iraq today are among the highest in the
world, low infant birth weight affects at least 23 percent of all births,
chronic malnutrition affects every fourth child under five years of age, only
41 percent of the population have regular access to clean water, [and] 83
percent of all schools need substantial repairs. The [International
Committee of the Red Cross] states that the Iraqi health-care system is
today in a decrepit state. [UN Development Programme] calculates that it

\textsuperscript{37} World Health Organization, \textit{Health Conditions of the Population in Iraq since the Gulf Crisis} \S 4 at 7
(Mar 1996), available online at <http://www.who.int/disasters/resource/pubs/
000396.html> (visited Sept 17, 2003).
(relying on a FAO report of 1995 published by CESR). These figures, however, are disputed.
Some scholars prefer the narrower criteria applied by Richard Garfield of Columbia
University. Garfield tabulated that the rise in the mortality rate accounted for between
a minimum of 100,000 and a more likely estimate of 227,000 excess deaths among under-five
age children from August 1991 through March 1998. See Richard Garfield, \textit{Morbidity and
\textsuperscript{39} United Nations, \textit{The Relationship between Economic Sanctions and Respect for Economic, Social and
Cultural Rights}, UN Committee on Economic, Social and Cultural Rights, UN Doc
E/C.12/1997/8, general comment 8 at \S 8 (1997).
\textsuperscript{40} See Center for Economic and Social Rights, \textit{Unsanctioned Suffering: A Human Rights Assessment
of the United Nations Sanctions on Iraq} 7 (May 1996), available online at <http://www.cesr.org/
text\%20files/sanct.PDF> (visited Sept 5, 2003); Phebe Marr, \textit{Gulf Security and Iraq’s Uncertain
Future}, Joint Force Q 50, 52 (Autumn 1995), available online at
It remains indisputable that among the highest costs of sanctions against Iraq was the crippling damage they inflicted on that country’s human resources. During the 1990s, Iraq’s educational system collapsed.\textsuperscript{42} Iraq’s literacy rate plunged from 89 percent in 1987 to 57 percent in 1997.\textsuperscript{43} Emigration from Iraq rose sharply, carrying with it a severe “brain drain” of Iraq’s best and brightest workers.\textsuperscript{44} Perhaps most telling about the broad impact of the sanctions is Iraq’s human development index. For 130 countries, this calculation measures the adult literacy rate, life expectancy, and GDP per capita as a standard approximation of living standards. For Iraq, this indicator tumbled from 55th place in 1990, to 106th in 1995, and to 125th in 1999.\textsuperscript{45}

The second period of the UN sanctions against Iraq was marked by the onset of the OFF program. By 1995, worldwide political support for Iraqi sanctions had dramatically diminished and widespread cheating by neighboring states had become more evident. As proposed, OFF permitted Iraq to export its oil on a regulated basis, under UN supervision, and to use revenues from oil sales to purchase humanitarian supplies. In part, the need for this program was triggered by the Security Council’s realization that the humanitarian crisis in Iraq was genuine and acute. Altruism, however, was not the main motive for the Security Council’s revision of its earlier plan on humanitarian trade. Through the OFF program, it was believed that wider international political support for the sanctions operation could be revived, and greater pressure then brought to bear on Saddam Hussein’s government. In broad scope, this Security Council-directed program relieved the worst of the food shortages as supplies began to arrive in Iraq in mid-1997. The Security Council passed its Resolution 986 as a “temporary” measure on April 14, 1995, imposing a restrictive cap on oil sales.\textsuperscript{46} The government of Iraq agreed to the Security Council conditions for this program a year later, and OFF began operation in late 1996.

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Under Resolution 986, the Council initially permitted Iraq to sell $2 billion worth of oil every six months, not including the dedication of 30 percent from all oil sales to finance the Compensation Fund for Kuwait.\footnote{Security Council Res No 1330, UN Doc No S/RES/1330 at ¶ 2 (2000).} In addition, deductions amounting to 4 percent would cover the UN Office of the Iraqi Programme ("OIP"), the arms inspection units (through the UN Special Commission ("UNSCOM") and the International Atomic Energy Authority ("IAEA")), and fees.\footnote{Of the remaining 66 percent, the resolution earmarked 13 percent for the three autonomous Kurdish northern governorates of Dahuk, Arbil, and Suleymaniyah, where a UN inter-agency group would run the humanitarian program, and the remaining 53 percent for the balance of the country where the government would be in charge of distribution. UN Office of the Iraq Programme—Oil-for-Food, \textit{In Brief} (July 2003), available online at <http://www.un.org/Depts/oip/background/inbrief.html> (visited Sept 18, 2003).} The government of Iraq finally accepted the resolution in May 1996, and oil started flowing in December 1996. Because of procurement and shipping lags, the UN humanitarian supplies did not arrive in Iraq until April 1997.

With the adoption of Security Council Resolution 1330 in December 2000,\footnote{Security Council Res No 1330, UN Doc No S/RES/1330 (cited in note 47).} 72 percent of the total export revenues were allocated towards humanitarian needs nationwide.\footnote{Id.} The balance went to Gulf War reparations through a Compensation Fund (25 percent since December 2000), UN administrative and operational costs for the program (2.2 percent) and costs for administration of the weapons inspection (that is, the UN Monitoring, Verification and Inspection Commission ("UNMOVIC") (0.8 percent).\footnote{Id.} Almost $28 billion worth of humanitarian supplies and equipment have been delivered to Iraq under the Oil-for-Food Programme, including $1.6 billion worth of oil industry spare parts and equipment. An additional $10 billion worth of supplies are currently in the production and delivery pipeline.\footnote{Id.} As of September 2003, the Coalition Provisional Authority, Iraqi experts, and the UN have prioritized more than $6.3 billion dollars in contracts.\footnote{UN Office of the Iraq Programme—Oil-for-Food, \textit{Iraq Oil Sales Fund Humanitarian Action} (May 28, 2003), available online at <http://www.un.org/Depts/oip/oip> (visited Sept 18, 2003).}

From December 10, 1996, through March 21, 2003, about 5.6 billion barrels of Iraqi oil valued approximately $64 billion were exported under the OFF program.\footnote{UN Office of the Iraq Programme—Oil-for-Food, \textit{Oil Exports (by Phase)}, available online at <http://www.un.org/Depts/oip/background/basicfigures.html> (visited Oct 1, 2003).} This amount looks impressive. However, far less value in goods has arrived in Iraq. After the 28 percent deductions for war reparations, UN
operations, and other items, as of December 31, 2002, OIP had received $46.8 billion worth of contracts, of which $39 billion had been approved.55 Humanitarian supplies and oil industry equipment worth more than $24.8 billion dollars had been delivered to Iraq.56 Over a period of about five years, serving an Iraqi population of 23 million, the program has delivered roughly $200 worth of goods per capita per year, including oil spare parts and other goods not directly consumed by the population. Allowing for domestic production outside the OFF program and for smuggling, the result still appears to leave Iraqi citizens an exceedingly low per capita income which may be at or below the $1 per day World Bank threshold of absolute poverty.

Nonetheless, "[a]s of 29 May 2003, some $28 billion worth [of] humanitarian supplies and equipment had been delivered to Iraq under the Oil-for-Food Programme, including $1.6 billion worth of oil industry spare parts and equipment. An additional $10 billion worth of supplies were in the production and delivery pipeline."57 "Since the first food arrived in March 1997, foodstuffs worth over $10.7 billion and health supplies worth over $2 billion were delivered to Iraq."58 There is no question that the program helped to improve the overall socioeconomic conditions of the Iraqi people throughout the country.59 Moreover, it prevented further degradation of public services and societal infrastructure.60 Regarding food, the nutritional value of the monthly food basket distributed countrywide has nearly doubled since 1996, from about 1,200 to over 2,200 kilocalories per person per day.61 Malnutrition rates in 2002 in south-central Iraq are half those of 1996 among children under the age of five.62

Despite these improvements, the Oil-for-Food program clearly is not tantamount to humanitarian aid. No foreign government or non-governmental organization donates food, clothing, medicine, or other items to Iraq under the program. The government of Iraq sells oil and then pays in hard currency (from a UN-controlled “escrow account”) for imports which must be approved by the

57 UN Office of the Iraq Programme—Oil-for-Food, About the Programme: A Fact Sheet (cited in note 53).
59 Id.
60 Id.
61 Id.
62 Id.
Security Council Sanctions Committee. Thereafter, the United Nations distributes the imports in the North and various UN staff oversees Iraqi government distribution in the Center and South. While the OFF program did alleviate the economic desperation in the late 1990s for much of Iraq's population, it did not eliminate the humanitarian crisis. The OFF program remains in place even after the US invasion and take-over of Iraq in March-April 2003, but is scheduled to end on November 21, 2003.

As the sanctions regime against Iraq developed, it underwent a process of transformation. It evolved from an operation dedicated to closing Iraq's borders during 1990 to 1997, to an import-export regime that strictly regulated specified goods bought by Iraq in exchange for at first limited and then unrestricted oil sales from 1997 through 2000. Between 2000 and 2003, UN sanctions against Iraq amounted to a regime that sought to ban more items than under the OFF program, but still tried to tailor the import of other items to sustain the sanctions operation with only nominal Security Council oversight. OFF will end in November 2003, long before a new government is formed in Iraq and demonstrates the capability to govern that country.

IV. LESSONS LEARNED FROM THE IRAQI SANCTIONS EXPERIENCE

A. LESSONS OF PURPOSE AND EFFICACY

The UN sanctions against Iraq produced lessons that seriously call into question both the operation's policy procedure and its legal substance. These measures were instigated to alter the conduct of Saddam Hussein's regime—to compel the Iraqi government to give up its weapons of mass destruction. To accomplish this objective, the Security Council as an international body is duty-bound to observe international law. It remains obligated by international legal rules and its own Charter in imposing sanctions, not the particular foreign policy interests of any member state. In this respect, the Security Council's justification for sanctions and the manner in which they functioned were also salient. UN economic sanctions supposedly provide an interim tactic short of military action

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63 The UN Secretariat said as much when it reported in November 2000 to the Security Council that:

[The humanitarian programme was never intended to meet all the humanitarian needs of the Iraqi population or to be a substitute for normal economic activity. Also, the programme is not geared to address the long-term deterioration of living standards or to remedy declining educational and health standards and infrastructure.]


intended to persuade Iraq to change its behavior. In the case of Iraq, this tactic did not fully succeed, as weapons of mass destruction or their components were not found in Iraq after 1998 and the regime was toppled by US military force, not UN economic coercion.

This suggests a lesson: the ways and means of implementing sanctions are significant. Such UN measures operate in two dimensions: economic and political. When the Security Council imposes restrictions on trade—inclusive of investment—against a target state, such conditions inexorably lead to disruption of that state’s economy. The Security Council justifies such restrictions because, on the political level, pressures from people impacted in the target state are presumed to persuade that government to comply with UN demands. Consequently, economic and political effectiveness stand as dual concepts inherent in the calculus of economic coercion that distinguishes the analysis of UN sanctions. The logic of imposing UN sanctions holds that the greater the economic efficacy of sanctions, the more likely those measures should be effective politically. Such reasoning implies that the more gravely UN sanctions disrupt a target state’s economy, the greater the likelihood of attaining the political goals of those sanctions. This critical consideration turns on the extent of that disruption, which depends on the strength, comprehensive scope, and enforceability of the boycott-embargo tandem. It is reasonable to infer that the extent of economic dislocation remains directly relative to the welfare of the target state’s citizens. To be sure, the process of UN sanctions depends on the inverse correlation between the welfare of a target state’s citizens and their government’s willingness to comply politically with the Security Council’s mandate. It follows that the more economic harm done to that state’s citizens, the greater political pressures should be generated by the people against the government, and the more willing the government should then become to accept the desired change.

In the case of Iraq, the fallacy of such reasoning prompted serious ethical concerns. For one, the obvious concern arose about the level of economic damage inflicted on innocent Iraqi civilians. If the economic damage caused by the sanctions on the citizenry is extreme, it seems proper to query whether these actions violate fundamental human rights and international humanitarian law. The particular calculus of UN economic sanctions posits that systematic economic pressures against a derelict state remain the primary goal of sanctions. The fact that such economic pressures are intended to induce citizens to rise up and instigate political change of their leadership cannot override the pernicious impacts on innocent persons targeted solely because they live in that state.

Another lesson of the Iraqi sanctions is that a UN sanctions operation must have some end game. Admittedly, strategic logic demands that it is imprudent to set a time limit for a UN sanctions operation. To do so would allow an offending government merely to bide its time until the sanctions expire.
However, it also seems desirable for a UN sanctions operation to be implemented with a deliberate, graduated timetable for achieving its objective. Further, the lack of a set deadline does not legitimize a sanctions operation in perpetuity. Indeed, Article 1, paragraph 1 of the UN Charter requires that measures undertaken to maintain international peace and security (inclusive of sanctions) must be “effective” and must be “in conformity with the principles of justice and international law.” A review process is needed to assess the threat and determine the proportionality of a UN sanctions response. Sanctions must be evaluated to make certain that they are not unjust or that they do not in any way violate principles of international law. Likewise, sanctions must be constantly reviewed to ascertain whether or not they are effective in maintaining peace and security. Ineffective or unjust sanctions or those that violate other norms of international law may not be imposed, or must be lifted if they have been imposed. In this regard, efforts by the Security Council to assess the economic efficacy of sanctions against Iraq faltered, while obtaining any kind of threat assessment was undercut by the absence of weapons inspectors between 1998 and late 2002. In sum, lawful sanctions may become illegal if applied for too long without achieving meaningful results. Similarly, protracted sanctions can produce grave impacts that injure innocent persons and society long after the illicit government ends, and excessively prolonged sanctions may come to be viewed as ineffective.

The possibility that sanctions can be terminated if certain conditions are fulfilled must be plainly specified. The Security Council should make clear the conditions for lifting sanctions against a state and, in the same instance, assure an offending government that sanctions will be lifted when it complies with the conditions and policies articulated in the sanctions resolution. If such a communication is not made, UN sanctions can become instruments for punitive retribution, as opposed to tools for policy persuasion. For Iraq, the Security Council in 1999 did propose to “suspend” its sanctions once independent verification had been performed. Suspension never happened, nor was an independent verification scheme ever adopted, much less implemented.65

A final practical lesson of the Iraqi sanctions is that politics matter. If sanctions are to attain legal and ethical solvency, they must not appear to endorse double standards. Double standards produce perceptions of political bias and hypocrisy. The application of UN sanctions against one offending government and not on another like offender—particularly within the same geographical area—can undercut the legitimacy that supports the international authority of UN sanctions generally. In so doing, respect for the role of the United Nations in striving to maintain international peace and security will be diluted. In the case of Iraq, destruction of its chemical, biological, and nuclear

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weapons capability was tied to the objective of making the Middle East free from states with weapons of mass destruction and long-range missile capability. That ambition is unquestionably laudable; it is just as reasonable, however, to take seriously the assertions by Iraq and other Arab states that they must possess such unconventional weapons as military deterrents against Israel, who is known to possess nuclear, biological, and chemical weapons. There is understandable method to the madness behind this deterrence logic.

B. HUMAN RIGHTS CONCERNS

The sanctions situation in Iraq produced serious lessons for human rights considerations as well. First and foremost, the Security Council is not above the law. UN sanctions are bound by norm-oriented objectives contained in the Charter and are not a means for the Security Council to express political disagreement with some state’s foreign policy conduct. UN sanctions are limited to altering the behavior of a member state, not for promoting regime change as their explicit objective. Both the Security Council and the sanctions that it authorizes are duty-bound by international legal rules and principles created by the UN. Foremost among these legal rules are those that pertain to human rights.

The UN Charter specifically obligates the Security Council to respect human rights in all its actions. The purpose of the United Nations in promoting and encouraging respect for human rights as articulated in Article 1, paragraph 3, inevitably restricts sanctions. This provision also mandates that the UN should ameliorate urgent humanitarian situations, not cause them. Sanctions, therefore, must not produce unwarranted deprivations for the people of a country. Sanctions that even indirectly cause deaths would be a violation of the right to life. Other human rights could also be violated by sanctions regimes, such as the rights to security of the person, health, education, or employment. In addition, Article 55 of the Charter reinforces the limitations of Article 1, paragraph 3, in that it requires that the United Nations promote higher standards of living and economic and social progress (paragraph a); provide for solutions to international economic, social, health, and other problems (paragraph b); and generate respect for and observance of human rights (paragraph c). Sanctions regimes that depress economic conditions, create public health crises or impinge on human rights would violate this critical UN protective provision. Similarly, the International Covenant on Economic, Social and Cultural Rights provides for the right to an adequate standard of living (Article 11), the right to health (Article 12), and the right to education (Article 13). The right to life is protected in Article 6 of the International Covenant on Civil and Political Rights.

and its Article 4 asserts the important additional concept of the non-derogability of basic rights. As the sanctions case of Iraq dramatically demonstrated, the plight of children during periods of economic deprivation is especially grave and vulnerable. Accordingly, human rights law has been constructed to grant children special protections in the Convention on the Rights of the Child. This convention expressly asserts in Article 6 that "every child has the inherent right to life" and directs all states to "ensure to the maximum extent possible the survival and development of the child." In Article 24, the Convention further directs states to "recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health" and "[t]o diminish infant and child mortality."

In light of these obligations, the UN sanctions imposed against Iraq prompt stark concerns about the lawfulness of their impact on innocent Iraqi civilians. The Security Council is indisputably accountable for principles of human rights, irrespective of Saddam Hussein's regime. It is uniformly accepted that governments make international legal rules to limit and condemn the predictable suffering and death of innocent persons. When UN economic sanctions are considered necessary to prevent greater suffering and death, those sanctions must still be limited by human rights law and humanitarian law, which both forbid the targeting of innocent persons. In this regard, it is well known that human rights are based on the inherent dignity and worth of every human being and are owed directly to individuals.

The human rights of civilians are not forfeited because of a government's misconduct, especially when the citizens have no voice in the decisions of that government. The conclusion is clear: Iraq's failure to comply with Security Council resolutions cannot give that body license to impose sanctions that abrogate its obligations to respect the human rights of Iraqi civilians. Thus, UN sanctions must respect certain mandates in the Charter, including the following: they must abide by international legal strictures and respect human rights; they must reflect an unambiguously stated purpose, namely to restore international

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67 International Covenant on Civil and Political Rights, General Assembly Res No 2200A (XXI), UN Doc No A/6316, arts 4, 6 (1966). Both the covenants above codify provisions in the Universal Declaration of Human Rights, in particular the right to life (Article 3), the right to freedom from inhuman or degrading treatment (Article 5), and the right to an adequate standard of living, including food, clothing, housing, and medical care (Article 25). These rights are especially vulnerable to violation under sanctions regimes. Article 25 also establishes the right to social security in the event of lack of livelihood in circumstances beyond a person's control and the entitlement to special care of mothers and children, both of which are vulnerable to violations by sanctions. Universal Declaration of Human Rights, General Assembly Res No 217A (III), UN Doc No A/810 (1948), available online at <http:www.un.org/Overview/rights.html> (visited Sept 18, 2003).

peace and security, not to punish a people for the malfeasance of their
government. They must be policy-oriented and not aimed at individual persons
in a government, and they should be regarded as a policy tool for righting legal
wrongs, not a preemptive instrument for punishing a wrongdoer.

C. HUMANITARIAN LAW CONCERNS

The UN Charter authorizes the Security Council to respond to threats to
international peace and security. When it does so, however, the Council often
functions in a murky zone between war and peace. UN sanctions fall into this
murky zone. Such a situation prompts the question of whether the Security
Council is governed by either the legal regime of humanitarian law during times
of armed conflict or that of human rights law during times of peace. While both
legal regimes are rooted in humanitarian norms, they offer varied degrees of
protection to the individual. The regime for human rights, as mentioned before,
allocates strict protection to civilian life, health, and property. In the case of
humanitarian law, as witnessed during the 2003 war with Iraq, the laws of armed
conflict permit belligerent parties to inflict collateral damage and civilian
casualties when attacking legitimate military targets, provided that three
conditions are met: (1) the harm to civilians may not be disproportionate to the
worth of the military target; (2) the damage and death must be unavoidable; and
(3) all efforts must be made to diminish the possibility of civilian deaths. In these
regards, a number of lessons for future UN sanctions operations are notable.

First, a sanctions regime imposed during an armed conflict is governed by
humanitarian law. Under the corpus of humanitarian law, the civilian population
must be protected from war and its consequences as much as possible. This
requires that the civilian population must be provided with or be permitted to
obtain, the essentials for survival, namely food, potable water, shelter, medicines
and medical care. A number of international legal instruments specifically codify
these provisions. For example, the Hague Convention (IV) Respecting the Laws
and Customs of War on Land of 1907 contain provisions that could substantially
limit sanctions regimes. In addition, the Martens Clause mandates that all
situations arising from war are to be governed by principles of law of civilized
nations, principles of humanity, and the “dictates of the public conscience.”

See Hague Convention (IV) Respecting the Laws and Customs of War on Land (1907), 36
Stat 2277 (hereinafter Hague Convention IV).

Id at preamble ¶ 8. This principle was reiterated in the Geneva Conventions of 1949 and
Additional Protocol I thereto. See Geneva Convention (I) for the Amelioration of the
Condition of the Wounded and Sick in Armed Forces in the Field art 63 (1949), 6 UST 3114;
Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and
Shipwrecked Members of Armed Forces at Sea art 63 (1949), 6 UST 3220; Geneva
Convention (III) Relative to the Treatment of Prisoners of War art 142 (1949), 6 UST 3316;
Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War art
Article 50 of the Hague Convention pointedly provides that, "No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible."\(^{71}\) Similarly, the four Geneva Conventions of 1949 contain provisions relevant to the imposition of sanctions. For example, they mandate the free passage of medical provisions and objects necessary for religious worship.\(^{72}\) These instruments also articulate rules relating to medical convoys and evacuation,\(^{73}\) which could be breached by a sanctions regime that restricted land or air transport of humanitarian goods. Since the main intent of the Geneva Conventions is to provide for the medical needs of military personnel wounded in armed conflict, a sanctions regime that limits the ability of a targeted state to provide for its wounded could be construed as unlawful. As the four agreements explicitly assert, Geneva Convention rights may not be abrogated or waived in any circumstance.

A second general humanitarian legal concern turns on whether the citizens injured are civilians or military personnel, and whether these people should be held responsible for their government's actions. This issue casts an intriguing dilemma, since international legal rules hold that in times of armed conflict, innocent persons should be protected from the consequences of crimes committed by others.\(^{74}\) A fundamental principle permeating each of the four 1949 Geneva Conventions on the Laws of War sets limitations on what can be legitimate targets during armed conflict. This principle, called the principle of discrimination, demands that the belligerent parties distinguish between combatants and noncombatants and between wounded and non-wounded combatants. The 1977 Protocol I to the 1949 Conventions prohibits belligerents from targeting the civilian infrastructure.\(^{75}\) One might logically conclude that actions prohibited in armed conflict ought to be prohibited during peacetime as well, even if legitimized by the UN employing the nonviolent tool of economic sanctions.


\(^{71}\) Hague Convention IV art 50 (cited in note 69).

\(^{72}\) Geneva Convention IV art 23 (cited in note 70).

\(^{73}\) Geneva Convention IV arts 21–22 (cited in note 70).

\(^{74}\) See generally Geneva Convention IV (cited at note 70).

\(^{75}\) As provided for in Protocol I,

(1) Starvation of civilians as a method of warfare is prohibited.

(2) It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works . . . for any . . . motive.

Protocol I art 54 (cited in note 70).
It bears remembering that Article 39 of the Charter permits the Security Council to take measures such as sanctions to “maintain or restore international peace and security” only upon its determination that there exists a threat to or breach of the peace, or an act of aggression. Sanctions, therefore, may only be imposed upon a government or other political unit that is capable of being a threat to international peace or security, or is in fact threatening international peace and security. While armed groups within a state may pose such a threat, a generally unarmed civilian population is unlikely of being capable of posing such a threat.

The implication of this is clear. A sensible code of accountability posits that responsibility for suffering caused by economic sanctions lies with those governments who instigate and enforce them, not their general populations. As Iraq indicates, UN sanctions are neither inevitable nor automatic economic actions. Such measures are decided intentionally, premeditatedly, and purposely, and are motivated by the ambition to compel a government to make amends for violations of international norms or legal rules. Government leaders who breach international legal rules may invite the application of UN sanctions, but that action is not synonymous with their bringing sanctions upon themselves. UN sanctions permeate and impact the entire fabric of a state’s society, not merely the political elites that commit the wrong. The reality of that point must not be lost in the process of devising and designing the sanctions regime.

A third lesson suggests that, since UN sanctions are instruments of international politics, the imposing governments are obligated to make them conform to the principle of equality of application under customary international law. This principle is indispensable for legitimizing a policy articulated by the United Nations. Indeed, the credibility of the UN rests on the uniform application of procedures for comparable situations in international relations. Such an egalitarian principle admittedly was difficult during the Cold War, and it remains difficult today. Even so, the Security Council’s application of sanctions measures, particularly against Iraq, appeared all too often politically motivated, as opposed to morally inspired. A raft of evil and corrupt governments exists in the world today, yet the UN Security Council selects only a few as targets for economic sanctions. Why? While the answer may come down to the protection of certain norms or politics of the moment, the more likely answer hinges on political goals sought by certain members, especially the major powers, on the Security Council.

A final lesson is that participants in sanctions coalitions must be able to withstand economic incentives and temptations from the target state to cheat. In the case of Iraq, Saddam’s government successfully offered economic incentives to some states, including its neighbors, to violate the embargo. Clearly the national interests of various governments favored cheating over upholding the sanctions. France, China, and Russia were large creditor states to Iraq, and each
was promised huge oil industry and armaments deals; and Iraq's neighbors—especially Syria and Jordan—frequently obtained cheap Iraqi oil in exchange for black market trade of goods with Iraq.\(^7\) One key to strengthening sanctions against Iraq therefore lay in tightening financial control over Iraq's revenues and compensating those states that suffered losses from sanctions against Iraq under Article 50 of the UN Charter, which provides:

If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

In addition, the category of sanctions (that is, economic embargoes, freezing assets, or travel restrictions) must be proportional to the threat posed by the target state to international peace and security. The obligation of proportionality does not accrue from the indeterminate standing of economic sanctions as a means of coercion. Instead, proportionality of response is tied to the nature of international humanitarian law. Given this requirement, there is a genuine necessity to reevaluate at regular intervals the extent and gravity of societal impacts a UN sanctions operation has over time against a target state.

V. CONCLUSION

In the wake of the Cold War, economic sanctions are increasingly being used by the United Nations as nonviolent instruments for handling international disputes. Yet, despite their nonviolent intent, UN economic sanctions, if applied and enforced effectively, can cause pervasive public suffering in a target state, propelled by the aim of pressuring that government into conceding and halting its objectionable policies. For nearly thirteen years, UN economic sanctions against Iraq lethally impacted Iraq's domestic society, yet they were politically unsuccessful in achieving their intended policy objectives. Indeed, as reported, the economic deprivation and societal suffering in Iraq were so extensive that charges alleging massive violations of the human rights of tens of thousands of innocent persons may well be accurate.

UN sanctions involve economic compulsion. More than that, however, sanctions constitute a coercive tool of international politics that strives to achieve what diplomatic suasion, pressure, or other political incentives have failed to do. UN sanctions have been imposed when states violate the territorial

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integrity of other states, when governments perpetrate severe human rights violations within their own territory, when governments violate international conventions, or when a state poses a threat to international peace and security. UN multilateral sanctions are usually justified on the grounds that they work to redress violations of international law or massive human rights abuses. As indicated by the case of Iraq, UN sanctions can be problematic, both in principle and in practice.

The Security Council entered into a decision to impose sanctions on Iraq without serious consideration of the need to protect the fundamental human rights of innocent Iraq civilians. Multilateral sanctions imposed by the Security Council benefit from a presumption of legitimacy drawn from an explicit grant of power in Chapter VII of the UN Charter. However, the Security Council risks violating its own Charter and international customary and human rights law if it fails to gauge the extent and duration of sanctions with the same sensitivity it would apply to the decision to use armed force. When that failure occurs, the legitimacy of those UN sanctions is undercut and the authority of the United Nations is compromised.

The case of Iraq demonstrates how and why UN economic sanctions might not measure up as a humane alternative to the used of armed force. More than that, UN sanctions on Iraq highlight the need to reiterate and plainly demarcate what legal rules constrain actions of the Security Council. It is obvious that the Council’s salient power to act in international relations must be circumscribed by accepted principles of international law. For nearly thirteen years, the Security Council maintained comprehensive sanctions against Iraq absent any reference to its legal obligations under principles of human rights and humanitarian law. It is remarkable that, even with as many as 400,000 innocent Iraqi citizens dying, nearly the entire international community remained silent on the critical issue regarding the lawfulness of Security Council sanctions against Iraq. This realization highlights the need for the Security Council, and particularly the major powers, to rethink the ways and means of applying sanctions against a government. Comprehensive sanctions may be well intended, but they can generate uncontrolled impacts against certain sectors within a state, especially the poor, the sick, the old, and the young. The evidence does not support the proposition that such sweeping sanctions will produce greater effectiveness in bringing about changes in the behavior of the government of that state, which ultimately remains the principal target for policy change.

This prompts a final point about the effectiveness of sanctions. As the Iraq case once again makes clear, the economic coercion generated by the Security Council’s sanctions can only be as strong as UN member states are willing to make it. This truism mirrors the essence of how the United Nations can be effective as an international enforcer of legal rules. States must cooperate closely to make UN sanctions decisions work well. The key, therefore, to making UN sanctions
effective is political will. The major powers on the Security Council in particular, but all states in general, must exercise sufficient political will, national determination, and, sometimes, economic sacrifice to make multilateral sanctions work. Otherwise, the sanctions imposed by the United Nations against a transgressor government will remain more symbol than substance and contribute little toward the attainment of anything approaching an international order governed by the rule of law.