

THE HUMAN RIGHTS IMPACT OF ECONOMIC SANCTIONS ON IRAQ

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I. The impact of economic sanctions on human rights in general

1. Under articles 24, 39 and 41 of the United Nations Charter, 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 may call upon Member States to apply such measures in order to maintain or restore international peace and security. During the last decade, the Security Council has applied economic sanctions in several cases which, in turn, have drawn the attention of different United Nations human rights bodies and mechanisms to their possible impact on the enjoyment of human rights.

2. Analysis of this issue led the Committee on Economic, Social and Cultural Rights¹ to adopt General Comment No 8 (1997) entitled “The relationship between economic sanctions and respect for economic, social and cultural rights”. The Committee found *inter alia* that:

- although it does not in any way call into question the necessity for economic sanctions in appropriate cases in accordance with Chapter VII of the Charter of the United Nations or other applicable international law, those provisions of the Charter that relate to human rights (Articles 1, 55 and 56) must still be considered to be fully applicable while imposing such sanctions;²
- economic sanctions almost always have a dramatic impact on the rights recognized in the International Covenant on Economic, Social and Cultural Rights. They often cause significant disruption in the distribution of food, pharmaceuticals and sanitation supplies, jeopardize the quality of food and the availability of clean drinking water, severely interfere with the functioning of basic health and education systems, and undermine the right to work;
- unintentionally, economic sanctions can lead to reinforcement of the power of oppressive élites, the emergence, almost invariably, of a black market and the generation of huge windfall profits for the privileged élites which manage it, enhancement of the control of the governing élites over the population at large, and restriction of opportunities to seek asylum or to manifest political opposition;
- while attempting to persuade the governing élite to conform to international law through applying political and economic pressure, the collateral infliction of suffering upon the most vulnerable groups must be fully recognized and taken into account;
- a number of United Nations and other studies have concluded that humanitarian exemptions to sanctions regimes established by the Security Council designed to permit the flow of essential goods and services destined for humanitarian purposes do not have this effect and are limited in scope.³ The Committee underlined that such exemptions do not address, for

example, the question of access to primary education, nor do they provide for repairs to infrastructures which are essential for the provision of clean water, adequate health care etc.;

- the imposition of sanctions does not in any way nullify or diminish the human rights obligations of a State party under the International Covenant on Economic, Social and Cultural Rights. In times of particular hardship, those obligations assume greater practical importance. The State remains under an obligation to ensure the absence of discrimination in relation to the enjoyment of human rights and to take all possible measures, including negotiations with other States and the international community, to reduce to a minimum the negative impact upon the rights of vulnerable groups within society;
- when the international community takes upon itself even partial responsibility for the situation within a country (whether under Chapter VII of the Charter or otherwise), it also unavoidably assumes a responsibility to do all within its power to protect the economic, social and cultural rights of the affected population.⁴

3. The Sub-Commission on the Promotion and Protection of Human Rights⁵ in its resolution 1997/35 “Adverse consequences of economic sanctions on the enjoyment of human rights” pointed out that economic sanctions “most seriously affect the innocent population, in particular the weak and the poor, especially women and children, (and..) have a tendency to aggravate the imbalances in income distribution already present in the countries concerned”. The Sub-Commission appealed to all States concerned to reconsider the adoption of economic sanctions, “even if the legitimate goals pursued are not attained yet, if after a reasonable period of time they appear not to be bringing about the desired changes in policy [...]”. In its decision 1999/110, the Sub-Commission reaffirmed that measures such as embargoes should be limited in time and in no way affect innocent civilian populations. In this context, the Sub-Commission underlined the need “to respect the Charter of the United Nations, the Universal Declaration of Human Rights and the relevant provisions of the Geneva Conventions of 1949 and the two Additional Protocols thereto which prohibit the starvation of civilian populations and the destruction of what is indispensable to their survival.”

4. In August 2000, the Sub-Commission adopted a new resolution on the “Human rights and humanitarian consequences of sanctions, including embargoes” appealing to the Commission on Human Rights to recommend “(a) to all competent organs, bodies and agencies of the United Nations system that they observe and implement all relevant provisions of human rights and international humanitarian law; (b) to the Security Council that as a first step it alleviates sanctions regimes so as to eliminate their impact on the civilian population by permitting the import of civilian goods, in particular to ensure access to food and medical and pharmaceutical supplies and other products vital to the health of the population in all cases”⁶. In the same resolution the Sub-Commission encourages “the international community to take appropriate and immediate measures to alleviate the suffering of people who are adversely affected by sanctions imposed upon their countries, in particular by facilitating the delivery of food and medical and pharmaceutical supplies and other products vital to the health of the population in all cases” and “urges Governments targeted by sanctions, as well as those Governments responsible for the implementation of those sanctions, to respect their human rights obligations and international peace and security obligations and to facilitate, by all available

means, the alleviation of the humanitarian crisis in the countries concerned”⁷.

II. The case of Iraq - views of United Nations human rights organs and bodies

5. On 6 August 1990, the Security Council (res. 661), acting under Chapter VII of the UN Charter, imposed economic sanctions on Iraq. United Nations human rights treaty bodies and mechanisms have commented on the impact of these sanctions on the enjoyment of human rights in Iraq:

- In 1997, the Committee on Economic, Social and Cultural Rights noted that “The living standard of a large section of the Iraqi population has been reduced to subsistence level since the imposition of the embargo”. The Committee stated that, notwithstanding the effect of sanctions and blockades, the State party remains responsible for implementing its obligations to the maximum of its available resources in accordance with article 2, paragraph 1 of the Covenant on Economic, Social and Cultural Rights. The Committee, while aware that the embargo imposed on Iraq created extremely difficult conditions with respect to the availability of food, medicines and medical articles, recommended that the Government take all necessary measures to address the needs of the population, in particular the most vulnerable groups such as children, the elderly and nursing mothers.⁸
- Also in 1997, the Human Rights Committee noted that “the effect of sanctions and blockades has been to cause suffering and death in Iraq, especially to children” and reminded the Government of Iraq that “whatever the difficulties, the State party remains responsible for implementing its obligations under the Covenant.”⁹
- In 1998, the Committee on the Rights of the Child recognized that the economic embargo on Iraq has “adversely affected the economy and many aspects of daily life, thereby impeding the full enjoyment by the States party’s population, particularly children, of their rights to survival, health and education”.¹⁰
- In 1999, the Committee on the Elimination of Racial Discrimination recalled that “other human rights treaty monitoring bodies, such as the Committee on Economic, Social and Cultural Rights (especially in its general comment No. 8 (1997)), the Committee on the Rights of the Child and the Human Rights Committee have recognized the adverse consequences of the economic sanctions on the enjoyment of human rights by the civilian population and that, in its decision 1998/114, the Sub-Commission on Prevention of Discrimination and Protection of Minorities appealed to the international community, and to the Security-Council in particular, for the embargo provisions affecting the humanitarian situation of the population of Iraq to be lifted.”¹¹ The Committee also took note of a report of UNICEF “which describes the tragic situation of children, including the loss of many lives, as a result of economic sanctions”. The Committee aligned itself with appeals to the international community and the United Nations (in particular the Security Council) for the lifting of “those embargo provisions affecting, in particular, the humanitarian situation of the population of Iraq.” Finally, the Committee stated that “despite all the difficulties the Committee considers that the Government of Iraq maintains the competence for the

implementation of its obligations under the terms of the Convention.”

- The Sub-Commission on the Promotion and Protection of Human Rights has considered the humanitarian/human rights situation in Iraq on a number of occasions.¹² In its decision, “Humanitarian Situation of the Iraqi Population”¹³, adopted earlier this month at its fifty-second session, the Sub-Commission appealed to the international community, and to the Security Council in particular, for the embargo provisions affecting the humanitarian situation of the population of Iraq to be lifted and urged the international community and all Governments, including that of Iraq, to alleviate the suffering of the Iraqi population, in particular by facilitating the delivery of food, medical supplies and the wherewithal to meet their basic needs. The Sub-Commission referred to reports of the intense suffering endured by the Iraqi people, including untimely death of children as documented by a report prepared by UNICEF in 1999, increase of infant mortality and morbidity, and continuing deterioration of the standard of living, nutrition and health of the population particularly in the areas of drinking water supply, electricity and agriculture. It pointed out that according to statistics published by the United Nations Office of the Iraq Programme, the “oil-for-food” programme was meeting only part of the vital needs of the population. The Sub-Commission considered that any embargo which condemned an innocent people to hunger, disease, ignorance and even death to be a flagrant violation of the economic, social and cultural rights and the right to life of the people concerned and of international law.

III. The impact of economic sanctions on the life of the Iraqi population

6. In addition to the views of the human rights organs and bodies, other United Nations and international sources have provided *inter alia* the following data illustrating the situation in Iraq:

- the maternal mortality rate increased from 50/100.000 live births in 1989 to 117/100.000 in 1997¹⁴ while the infant mortality rate rose from 64/1.000 births in 1990 to 129/1.000 in 1995.¹⁵ Almost the entire population of young children is affected by a shift in the nutritional status towards malnutrition.¹⁶
- hospitals and health centers have largely remained without repair and maintenance. The functional capacity of the health care system has degraded further due to shortages of water and power supply, lack of transportation and the collapse of the telecommunications system. Furthermore, communicable diseases, such as water borne diseases and malaria have become part of the endemic pattern of the precarious health situation.¹⁷
- substantive progress in reducing adult and female illiteracy has ceased and regressed to mid-1980 levels. Only 53% children from ages 6 to 23 enroll in school. More families are forced to rely on children to secure household incomes. Dropouts in elementary schools increased from 95.692 in 1990 to 131.658 in 1999.¹⁸

7. In its first report, the Second Panel, established by the Security Council to monitor the humanitarian situation in Iraq¹⁹ took note of the Iraqi Government’s responsibility for the

humanitarian crisis, but also stated that “Even if not all suffering in Iraq can be imputed to external factors, especially sanctions, the Iraqi people would not be undergoing such deprivations in the absence of prolonged measures imposed by the Security Council and the effects of the war”. The report further stated that “Due to a substantial shortfall in revenue for the implementation of approved distribution plans, the ‘oil for food’ humanitarian programme established by the Security Council has not been able to achieve fully its objectives. But even if all humanitarian supplies were provided in a timely manner, the humanitarian programme implemented pursuant to resolution 986 (1995) can admittedly only meet but a small fraction of the priority needs of the Iraqi people. Regardless of the improvements that might be brought about in the implementation of the current humanitarian programme - in terms of approval procedures, better performance by the Iraqi Government, or funding levels - the magnitude of the humanitarian needs was such that they could not be met within the context of the parameters set forth in resolution 986 (1995) and succeeding resolutions, in particular resolution 1153 (1998). Nor was the programme intended to meet all the needs of the Iraqi people.”²⁰ (See also section IV below).

8. Any assessment of the impact of economic sanctions on Iraq must also determine the role of other causes of social hardship in Iraq, such as the effects of the wars with Iran and Kuwait; Iraqi dependence on the export of oil and the import of food²¹; delay by the Government in accepting the oil for food programme²²; the failure by the Government to take full advantage of the food and health care resources available under the programme and of being very slow in the distribution of medicines and medical supplies²³; lengthy procedures for the purchase of goods which have been streamlined only very recently²⁴; and Government policy with regard to allocation of available resources. There are allegations that data provided by the Government of Iraq have in some instances been deployed for propaganda purposes²⁵. In addition, the restrictions on freedom of expression in Iraq²⁶ and the refusal of the Government to allow independent human rights experts complete and unrestricted access to the country represent an obstacle to the gathering of reliable and complete data on the humanitarian and human rights situation in the country²⁷.

9. The former Special Rapporteur on the Human Rights Situation in Iraq, established by the Commission on Human Rights, has stressed that if the Government of Iraq had not waited five years to accept the “oil-for-food” agreement, millions “of innocent people would have avoided serious and prolonged suffering.”²⁸ He further reported that, while the Government of Iraq had failed to use its existing resources well or to cooperate fully to take advantage of other available resources, the Government of Iraq had used some resources to enrich itself. The Special Rapporteur also reported that the Government of Iraq had ignored the recommendations of both the UN Office of the Iraq Programme and UNICEF to give priority to child nutrition and maternal health programmes. It had also been slow to distribute medicines and medical supplies for its warehouses and had put in place a system of distribution of foodstuffs and medicaments allegedly susceptible to manipulation against opponents.

IV. Recent developments in the United Nations humanitarian programme for Iraq

10. On 17 November 1999, the Security Council approved Resolution 1284, which introduced several changes in the sanction regime for Iraq with a view to ameliorating the humanitarian situation

of the population. These included the removal of ceilings on imports of Iraqi petroleum and petroleum products originating in Iraq²⁹, as well as the waiver of approval requirement by the Sanctions Committee for supplies of foodstuffs, pharmaceutical and medical supplies, as well as basic or standard medical and agricultural equipment and basic or standard educational items. The Secretary-General was further asked to make arrangements, subject to Security Council approval, to allow funds deposited in the escrow account to be used for the purchase of locally produced goods and to meet the local cost for essential civilian needs, including the cost of installation and training services.³⁰

11. In the months following the approval of resolution 1284, the Secretary-General has submitted regular reports to the Security Council on the implementation of the humanitarian programme and the progress made in meeting the needs of the Iraqi people. The amount of money available for the humanitarian programme has increased notably.³¹

12. In his most recent report to the Security Council³², the Secretary-General stresses *inter alia* that the nutritional and health status of the Iraqi people continues to be a major concern and that increased revenues available for the implementation of the humanitarian programme should be used by the Government of Iraq to reduce current malnutrition levels and to improve the health status of the Iraqi people. The Secretary-General also points out that there are still major concerns about the deterioration of infrastructure. Unless infrastructure for electricity, water and sanitation is sufficiently rehabilitated, the Iraqi people will continue to be vulnerable to disease and hardship. The report also notes that greater efforts are needed to reverse the current level of deterioration in the education sector. In this context, the Secretary-General calls for additional efforts by the Security Council to deal expeditiously within the procedures established for the humanitarian exemptions and for adequate measures and cooperation by the Government of Iraq to improve the situation. The report of the Secretary-General also stresses that: "In any assessment of the programme, however, it should be born in mind that it was never intended as a substitute for the resumption of normal economic activity, and cannot be expected to address the whole range of needs of the Iraqi population".³³

V. Conclusions

13. The mandate of the High Commissioner for Human Rights includes the coordination of human rights activities throughout the United Nations system. That entails drawing attention to the human rights implications of measures taken by all organs and bodies of the system. OHCHR believes that the concerns expressed by the United Nations human rights expert bodies and mechanisms, as well as by United Nations organs, agencies and programmes, suggest the need for urgent consideration of the human rights dimension in assessing the impact of economic sanctions on the population of Iraq. While noting that it is the obligation of the State concerned to take steps "to the maximum of its available resources" to provide the greatest possible protection for the economic, social and cultural rights of each individual living within its jurisdiction, OHCHR is conscious that the international human rights instruments place upon governments and the international community a duty to strive to ensure realization of all basic rights, including the right to food, health, education and shelter.

14. OHCHR believes that the current sanctions regime is having a disproportionately negative impact on the enjoyment of human rights by the Iraqi population. OHCHR considers that the time has come for the extent and nature of the sanctions regime on Iraq to be reexamined.

15. OHCHR would like to propose that ECHA examines the impact of economic sanctions on the enjoyment of human rights by the people of Iraq with a view to developing policy advice for the Secretary-General.

NOTES

1. The Committee on Economic, Social and Cultural Rights, composed of independent experts, has been established by ECOSOC to monitor the implementation of the International Covenant on Economic, Social and Cultural Rights.

2. When a sanctions regime is applied, several specific human rights instruments enshrined in international law must be considered, in particular the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, as well as relevant resolutions of the General Assembly, Security Council, and the Commission on Human Rights. It is to be noted that Inter-Agency Standing Committee in its Statement to the Security Council dated 29 December 1997 stressed that any sanctions regime must take fully into account international human rights instruments and humanitarian standards established by the Geneva Conventions (S/1998/147).

3. Ms Graça Machel, Special Rapporteur on the impact of armed conflict on children, stated: "humanitarian exemptions tend to be ambiguous and are interpreted arbitrarily and inconsistently. ... Delays, confusion and the denial of requests to import essential humanitarian goods cause resource shortages. ... [Their effects] inevitably fall most heavily on the poor" - Report to the General Assembly: Impact of Armed Conflict on Children (A/51/306, annex, para. 128).

A study "Toward More Human and Effective Sanctions Management: Enhancing the Capacity of the United Nations System, Executive Summary", prepared at the request of the UNDHA on behalf of the IASC, 6 October 1997 (L. Minear, et al.), underlines that the review procedures applied under sanctions committees established by the Security Council "remain cumbersome and aid agencies still encounter difficulties in obtaining approval for exempted supplies. ... [The] committees neglect larger problems of commercial and governmental violations in the form of black-marketing, illicit trade, and corruption."

4. On the issue of human rights indicators see OCHA "Coping with the humanitarian impact of sanctions: an OCHA perspective", December 1998, and E. HOSKINS, *The impact of Sanctions: a study of UNICEF's perspective*, February 1998.

5. Former Sub-Commission on Prevention of Discrimination and Protection of Minorities.

6. See: Sub-Commission resolution 2000/1.

7. Ibid., see also Working Paper by Marc Bossuyt, prepared for the Sub-Commission, "The adverse consequences of

economic sanctions on the enjoyment of human rights” (E/CN.4/Sub.2/2000/33).

8. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Iraq (E/C.12/1/Add.17).

9. Concluding Observations of the Human Rights Committee: Iraq (CCPR/C/79/Add.84).

10. Concluding Observations of the Committee on the Rights of the Child: Iraq (CRC/C/15/Add.94).

11. Concluding Observations of the Committee on the Elimination of Racial Discrimination: Iraq (A/54/18, paras.337-361).

12. See: decisions 1996/107; 1997/119, 1998/114, 1999/110.

13. Sub-Commission decision 2000/112.

14. See: Report of the Second Panel established pursuant to the note by the President of the Security Council of 30 January 1999 (S/1999/100), concerning the current humanitarian situation in Iraq (S/1999/356, Annex II).

15. See: Iraq Child and Maternal Mortality Surveys, UNICEF 1999.

16. See: Nutritional Status Survey of Infants in Iraq, UNICEF 1998.

17. See: S/1999/356, Annex II. See also ICRC, Iraq: A decade of sanctions, 14 December 1999.

18. See: S/1999/356, Annex II.

19. See: S/1999/356, Annex II.

20. To meet pressing humanitarian needs, the Panel concluded that additional revenue, more humanitarian assistance and better distribution were required. The report recommended the lifting of the ceiling of allowable oil exports by the Security Council and the provision of spare parts to enable Iraq to increase its export capacity, and to allow private foreign investment in the oil industry and agriculture. It further recommended the timely distribution of humanitarian goods by the Government of Iraq, as well as actions to address needs of vulnerable groups, especially street children, the disabled, the elderly and the mentally ill, and ensure that adequate humanitarian assistance be provided to those involuntarily displaced.

21. Ibid.

22. See: the Report of the Special Rapporteur on Human Rights Situation in Iraq to General Assembly (A/54/466).

23. Ibid. See also the report of the Secretary General of 1 June 2000 (S/2000/520).

24. See: SC res. 1284 (2000) and the Report of the Group of UN Experts established pursuant to paragraph 30 of this resolution.

25. See: the Report of the Special Rapporteur on Human Rights Situation in Iraq to the General Assembly at its fifty-fifth session.

26. See: e.g. the report by the Special Rapporteur on Human Rights Situation in Iraq to the Commission on Human Rights at its fifty-four session (E/CN.4/1998/67).

27. See: also the Second Report of the International Development Committee of the House of Commons, 27 January 2000.

28. See: A/54/466.

29. See: S/RES/1284, para. 15.

30. The resolution further provided the possibility of the suspension of sanctions for a 4-month renewable phase if the Iraqi authority had co-operated with the new weapon inspection unit within a 120-day period.

31. See: S/2000/520.

32. Ibid.

33. Ibid. Para 115.