

Iraq and the United Nations, Post-War and Pre-Peace – The Dilemma of the Future

H.C. GRAF VON SPONECK*

Abstract

Over the course of a decade, Iraq suffered a dictatorship, the most comprehensive economic and military sanctions regime in the history of the United Nations, and two wars. All these factors contributed towards a humanitarian crisis in one of the previously most developed and richest countries in the region, with a well-educated and wealthy population, as well as triggering economic and social setbacks which considerably weakened the country's infrastructure. This article will examine the far-reaching and long lasting consequences this sanctions regime had on the civilian population. It will also examine how certain states thought that such sanctions were necessary in the name of international peace and security despite their negative humanitarian consequences. The article goes on to identify the institutional failings which contributed towards such a policy, and suggests ways in which alternative approaches could be adopted. Some ideas are presented which could possibly help to avoid similar humanitarian crises in future conflicts.

1. The Framework

On 2 August 1990 Iraqi troops invaded and illegally occupied Kuwait. The United Nations Security Council reacted quickly. Four days after the invasion, the most comprehensive economic and military sanctions ever pronounced against a nation were imposed on Iraq.¹ The 1991 Gulf War forced the Iraq Government to withdraw its troops from Kuwait, which fulfilled the UN conditions. However, the economic sanctions were not lifted. Instead, the Security Council decided in April 1991 to pass Resolution 687, which demanded of Iraq the disarmament of all of its weapons of mass destruction as a requirement for the end of sanctions.²

Still, as the years went by, the Security Council became increasingly disunited over whether Iraq had fulfilled the disarmament requirements of Resolution 687.³ As a result, economic sanctions remained in place until the US/UK-led invasion of Iraq in March 2003. Whereas Resolution 687 stipulated that sanctions should be lifted sixty days after Iraq had fully complied with its disarmament obligations,⁴ the Security Council Resolution 1284, later reaffirmed in Resolution 1441, amended the term 'lifted' and established that sanctions should be 'suspended' if UNMOVIC,⁵ established by

* Hans Graf von Sponeck has served in the United Nations for 32 years, holding senior posts as UN Resident Coordinator in Botswana, Pakistan and India, Director of the UNDP European Office in Geneva, UN Humanitarian Coordinator in Iraq and UN Assistant Secretary General. This article was finalized at the beginning of January 2005 for the Essex Human Rights Review, accessible at <http://www.ehrr.org.uk>.

¹ See UN Security Council Resolution 661, 6 Aug. 1990.

² See UN Security Council Resolution 687, 3 Apr. 1991.

³ *Ibid.*, para. 22.

⁴ See UN Security Council Resolution 687, 3 Apr. 1991.

⁵ The United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) was created through the adoption of Security Council Resolution 1248, 17 Dec. 1999. UNMOVIC replaced the former UN Special Commission, UNSCOM, and continues with the mandate to verify Iraq's compliance with its

Resolution 1284, confirmed that Iraq had complied with its disarmament obligations as set forth in Resolution 687.⁶ Six weeks after cessation of hostilities, on 23 May 2003, the UN Security Council formally lifted economic sanctions against Iraq.⁷ At the time the sanctions ended, the human conditions were nevertheless appalling.

During the sanctions, one-third of the children in Iraq were chronically malnourished, 10.1 per cent were at an acute malnourished stage, and 22.9 per cent were underweight.⁸ These figures occurred in a country which, prior to 1990, had had one of the highest per capita food availabilities in the Middle East, and where, as in most modern industrial states, up to two-thirds of food requirements were imported.⁹ Moreover, after 1997 mortality among children under five had levelled off at the high rate of between 100 and 131 deaths per 1000 live births,¹⁰ calories per capita were at 68 per cent of pre-sanctions levels,¹¹ and literacy levels had declined from 81 per cent to 73.5 per cent.¹² The 1991 Gulf War severely damaged Iraq's infrastructure, and in its aftermath, worsened by the imposed sanctions regime, money and spare parts were not available to repair sewage works and water purification plants. This led to an overall deterioration in the availability and quality of drinking water.¹³ Furthermore, unemployment was estimated to be running at between 60 per cent and 75 per cent of the workforce.

In 1995, the United Nations and the Government of Iraq had finally agreed on what became known as the Oil-for-Food Programme,¹⁴ after years of confrontation over the introduction of a humanitarian exemption to protect the civilian population from the full impact of economic sanctions. Why, despite such a unique humanitarian programme, were socio-economic conditions in Iraq so poor at the time sanctions were lifted in 2003? Some possible answers will follow.

2. Preparing for the War

In 1999, the then Canadian Foreign Minister, Lloyd Axworthy, participating in an Iraq debate in the UN Security Council, made the important point that the Security Council had to act for the benefit of the international community and not in the interest of individual member states. On the contrary, in the year 2000, the then chairman of the

obligation to be rid of its weapons of mass destruction (chemical, biological weapons and missiles with a range of more than 150 km), and to operate a system of ongoing monitoring and verification to ascertain that Iraq does not re-acquire the same weapons prohibited to it by the Security Council.

⁶ See UN Security Council Resolution 1284, 17 Dec. 1999.

⁷ See UN Security Council Resolution 1483, 22 May 2003.

⁸ See 'Situation Analysis of Children and Women in Iraq', UNICEF Iraq, 30 Apr. 1998, at 58.

⁹ See 'Humanitarian Assistance Capacity in Iraq: Part I', CARE International in Iraq / John Hopkins University Centre for International Emergency, Disaster and Refugee Studies, 2003, 7-10.

¹⁰ See UNICEF CF/DOC/PR/1999/29, Aug. 1999.

¹¹ See Marc Bossuyt, 'The adverse consequences of economic sanctions on the enjoyment of human rights', UN Doc. E/CN.4/Sub.2/2000/33, 21 June 2000, at 16.

¹² See 'The Central Statistical Organization: Multiple Indicator Cluster Survey for the Year 2000' UNICEF/Republic of Iraq Planning Commission, Baghdad, Dec. 2001, 19-20.

¹³ See 'Iraq: 1989-1999, a Decade of Sanctions', International Committee of the Red Cross Report, available at <http://www.icrc.org/Web/Eng/siteeng0.nsf/html/57JQAP>, accessed 23 Dec. 2004.

¹⁴ The Oil-for-Food Programme was initially established by UN Security Council Resolution 986, passed under Chapter VII of the UN Charter; see UN Security Council Resolution 986, 14 Apr. 1995. Subsequently a memorandum of understanding to this effect was signed on 20 May 1996 in New York between the United Nations and the Government of Iraq; see 'Memorandum of Understanding between the Secretariat of the United Nations and the Government of Iraq on the Implementation of Security Council Resolution 986' (1995), UN Doc. S/1996/356.

United States Senate Foreign Relations Committee, Jesse Helms, told the UN Security Council during a visit: 'Most Americans do not regard the United Nations as an end in and of itself – they see it as just one part of America's diplomatic arsenal. To the extent that it becomes ineffective – or worse, a burden – the American people will cast it aside.'¹⁵

This was the attitude of the US administration when it came to the issue of Iraq and UN involvement as well. A review of the positions taken by the United States in the Security Council during the thirteen years of economic sanctions and military embargo against Iraq reveals that US Government concerns rested first and foremost with Iraq's weapons of mass destruction (WMD) and US security interests, rather than with the humanitarian implications of UN Iraq policies.¹⁶

The evidence of this first appeared in 2000, when a group named the Project for the New American Century (PNAC) published a US strategy for the twenty-first century.¹⁷ Their influence was obvious two years later, when the US President George W. Bush formalized this position in a national security strategy document.¹⁸

US rhetoric during these years, within and outside the UN Security Council, expressing apprehension over the human conditions in Iraq, cannot hide this fact. Every effort was made by Washington to prevent Iraq from regaining authority over its own finances. The US maintained a complicated and seriously impedimental UN bureaucratic system for the import of supplies into Iraq under the Oil-for-Food Programme. Efforts were made to block, permanently or temporarily, goods and services from reaching the country, allegedly because of their dual-use potential.¹⁹ This was done in contradiction to the fact that the Security Council established an export/import monitoring mechanism for dual-use items, under Resolution 1051, adopted on 27 March 1996.²⁰ All of this had to do with US fears that Iraq might use funds or humanitarian supplies to develop its arsenal of biological, chemical and nuclear weaponry. These fears were not unjustified, given the Iraqi history of WMD production. However, had the US authorities and the UN Security Council as a whole carried out their oversight mandate more consistently, and adjusted UN sanctions policies accordingly and in a timely manner, socio-economic conditions in Iraq could have developed differently and more humanely.

2.1 UN Security Council Resolutions on Iraq – Due Diligence, or Acts *Ultra Vires*?

The UN Security Council left political leadership largely in the hands of its most powerful member. It also often failed to act in a timely manner, e.g. in speedily raising the revenue level for the humanitarian programme when, in 1997, the severe inadequacy

¹⁵ See Address by Senator Jesse Helms, Chairman, US Senate Committee on Foreign Relations before the United Nations Security Council, 20 Jan. 2000, available at: <http://www.sovereignty.net/center/helms.htm>, accessed 3 Jan. 2005.

¹⁶ As an example, the then US Ambassador to the United Nations in New York, John D. Negroponte, told the US Senate Foreign Relations Committee on 7 Apr. 2004 that the humanitarian programme for Iraq was important but that the main US pre-occupation concerned Iraq's disarmament.

¹⁷ Thomas Donnelly, Donald Kagan and Gray Schmitt, 'Rebuilding America's Defenses, Strategy, Forces and Resources for a New Century, A Report of the Project for the New American Century', Washington D.C., Sept. 2000, available at <http://www.newamericancentury.org/RebuildingAmericasDefenses.pdf>.

¹⁸ 'The National Security Strategy of the United States of America', Washington D.C., Sept. 2002.

¹⁹ In 2002, the US and the UK governments had put a record 5.5 billion US dollars worth of humanitarian supplies on hold.

²⁰ See UN Security Council Resolution 1051, 27 Mar. 1996, as well as 'A Brief Overview of Security Council Applied Sanctions', United Nations Secretariat Department of Political Affairs, Informal Background Paper, in, Swiss Federal Office of Foreign Economic Affairs (ed.): *2nd Interlaken Seminar on Targeting United Nations Financial Sanctions*, 1999, 127-52, at 129.

of an allocation of 113 USD per person per year to cover all sectors of human needs (food, health, water supply and sanitation, electricity, agriculture and education) became apparent.²¹ The Security Council recognized the ensuing damage caused by policies which it had introduced or which individual members had unilaterally decided to follow. The Council, however, did not have the political will or power to modify such policies. Examples include the Council's decision to deduct 30 per cent of Iraq's oil revenue for payment of compensation to foreign individuals, firms and governments that had allegedly been victimized by Iraq's invasion of Kuwait. The Security Council could easily have lowered or frozen such deductions at the time when death rates and malnutrition in Iraq were soaring.²² The Council was aware that the bureaucratization of the Oil-for-Food Programme had introduced long delays in the arrival of humanitarian supplies.²³ Some steps to remove such impediments were taken, but only after inordinate delays.

2.2 No-Fly-Zones²⁴

The Security Council was well aware that the introduction of two 'no-fly-zones' in Iraq by the US, the UK and French governments²⁵ was without international mandate. The authority claimed by the 1991 Gulf War Coalition under which they could impose the Iraqi no-fly-zones rests principally on an interpretation of several Security Council Resolutions.²⁶ The United States and the UK in particular tried to legitimize the imposition of the no-fly-zones by an interpretation of Security Council Resolutions 687²⁷ and 688.²⁸ Resolution 688 expressed concern over the repression of the Iraqi civilian population, especially in Kurdish populated areas, however it can hardly be read as authorizing no-fly-zones as it recalls provisions of Article 2.7 of the UN Charter rather than any substantive Chapter VII provisions, under which use of force could possibly be authorised.²⁹ The closest Resolution 688 comes to indirectly referring to Chapter VII is by demanding 'that Iraq, as a contribution to removing the threat to international peace and security in the region, immediately end this repression of the Iraqi civilian population] ... the consequences of which threaten international peace and security in the region.'³⁰ Instead of authorizing the use of force by the formulation used in Security Council Resolution 678³¹ 'authorizing States to take all necessary measures', paraphrasing

²¹ For the initial three phases of the Oil-for-Food Programme in 1996-1998, the total allocation per six months phase for a population of 22.5 million was 1.3 billion US dollars.

²² For most phases of the Oil-for-Food Programme, the value of humanitarian supplies arriving in Iraq was little more than the amount of compensation payments Iraq had to make to the UN Compensation Commission in Geneva.

²³ Procurement of humanitarian supplies involved a minimum of 23 separate steps by Iraq, the UN and the exporter.

²⁴ No-fly-zones prohibit the entry of unauthorized aircraft into airspace over specifically determined territory; for a good overview please see Torsten Stein, 'No-Fly-Zones', in *Israel Yearbook on Human Rights* 27 (1997), 193-214.

²⁵ Initially, France had joined the US and the UK in establishing these zones in 1991, covering Iraqi airspace north of the 36th parallel and south of the 32nd parallel, yet had left this alliance by 1 January 1997, when the US and UK decided to extend the southern zone to the 33rd parallel.

²⁶ See Timothy McIlmail, 'No-Fly-Zones: The Imposition and Enforcement of Air Exclusion Regimes over Bosnia and Iraq', in *Loyola of Los Angeles International and Comparative Law Journal* 17(1994), 35-83, at 49-53.

²⁷ UN Security Council Resolution 687, 3 Apr. 1991.

²⁸ UN Security Council Resolution 688, 5 Apr. 1991.

²⁹ Article 2.7 is part of Chapter I of the UN Charter, 'Purposes and Principles', while Chapter VII deals with 'Action with Respect to Threats to the Peace, Breach of Peace and Acts of Aggression', and resolutions under Chapter VII can authorize the use of force.

³⁰ See United Nations Security Council Resolution 688, paras. 1 & 2.

³¹ See UN Security Council Resolution 678, 29 Nov. 1990.

'you may use force', Resolution 688 appeals 'to all Member States and to all humanitarian organizations to contribute to these humanitarian relief efforts.'³² Furthermore, it is worth noting that Resolution 688 was adopted by ten votes to three with two abstentions, making it at the time the most controversial and least supported Security Council resolution on Iraq.³³ Individual members of the Council intermittently raised the subject of the no-fly-zones in the Security Council, yet the Council failed to ever carry out a debate on these zones, even when in 2002 and 2003 the violations of Iraqi airspace by the US and UK air forces had no longer even remotely to do with the protection of religious and ethnic groups such as the Shias in the south and the Kurds in the north, but instead involved deliberate destabilization and preparation for war.

The deterioration of socio-economic conditions in Iraq certainly cannot be explained solely in terms of the negligence of the UN Security Council to carry out its oversight responsibilities or to act in accordance with the knowledge it had of the deteriorating conditions in Iraq. The dictatorship of the Government of Saddam Hussein made its own and distinct contribution to the misery of its people. It may be politically convenient to leave accountability for what happened in Iraq during the period up to the March 2003 war in a nebulous state of interpretation, with all the advantages this has for the stronger over the weaker party. Systematic analysis, however, has to disregard a one-sided approach, through which the human drama is explained either by the brutality of a regime or by the failures of the international community. Still, there have been various attempts to identify and overcome the devastating impact the sanctions had on the civilian population of Iraq. A report commissioned by the UN Department of Humanitarian Affairs, the precursor of the Office for the Coordination of Humanitarian Affairs (OCHA), published in December 1995, offered interesting, analytical insight on the question of identifying strategies for minimizing the negative impact of the sanctions regime.³⁴ Subsequently, in 1997,³⁵ another study elaborated concrete methodologies for the assessment of the humanitarian impact of sanctions and measures recommended for coping with the adverse humanitarian consequences of sanctions. Nevertheless, much more work has to be carried out in order to fully understand the specific and separate roles the protagonists have played in bringing about the desolate conditions in Iraq.

At this stage, one can conclude that economic sanctions played a significant role in creating these conditions, that the Security Council did cross the boundary between what were unavoidable and negative side-effects of legally adopted UN sanctions and possible violations of international law, including the violations of provisions of two international covenants (Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights)³⁶ and the Convention on the Rights of the Child.³⁷ The UN Security Council had more humane options at its command but chose not to

³² See UN Security Council Resolution 688, para. 6.

³³ See n. 23 above, at 209.

³⁴ See Claudia von Braunmühl and Manfred Kulesa, 'The Impact of UN Sanctions on Humanitarian Assistance Activities. Report on a Study Commissioned by the United Nations Department of Humanitarian Affairs' (Berlin: Gesellschaft für Communication Management Interkultur Training mbH, December 1995).

³⁵ I. Minear et al., 'Toward more Humane and Effective Sanctions Management: Enhancing the Capacity of the United Nations System. Study Commissioned by the United Nations Department of Humanitarian Affairs', OCHA 6 Oct. 1997, available: at http://www.reliefweb.int/ocha_ol/pub/misc/preface.html.

³⁶ See Fédération Internationale des Droits de l'Homme (eds.), 'Iraq. Sanctions against Iraq and Human Rights: a devastating, misguided, intolerable method. A Legal Analysis', No. 321/2, Paris, Mar. 2002, especially 9-15.

³⁷ See Peggy Kozal, 'Is the Continued Use of Sanctions as Implemented against Iraq a Violation of International Human Rights?', in *Denver Journal of International Law and Policy* 28 (2000), 384-400, at 396-9.

introduce these in a timely and decisive manner and thereby reduce the severity of the impact of sanctions.

2.3 Effect of Sanctions as an Institutional Lapse

In the context of the re-emerging demands for the reform of the United Nations, other elements must be cited to explain Iraq sanctions policies. Among these is the fact that the five permanent members of the Security Council had the advantage of ‘permanent’ association with a political issue such as sanctions against a country. China, France, Russia, the United Kingdom, and the United States were involved in the Iraq discussion from the very beginning in 1990, and shaped Iraq policies throughout the years. The process and substance of Iraq policy were in the hands of these five countries.³⁸ Elected members of the Council, for example Malaysia, Bangladesh, Syria, Mexico, and Canada, as involved as they were during their two-year tenure in the Council, had little chance of making a significant impact on Council policies. For many ‘low-income’ members it was also an issue of lack of human and financial resources which prevented a more sustained involvement. More powerful and better-endowed members of the Council used this fully to their political advantage. The United Nations became like a tool-box, from which the powers chose what they needed at any given time, or disregarded when they could not find or obtain their preferred implements.

The international debate leading up to the March 2003 invasion of Iraq can serve as a profound example of the way powerful governments represented in the Security Council disregarded positions taken by others when these questioned sanctions policies or the justification for preparing for military confrontation. The most extreme manifestation of this approach was the unilateral decision by the governments of the United States and the United Kingdom to mount a military offensive without UN Security Council mandate.³⁹ Public pronouncements showed that as early as 2002 these two governments were distinctly preoccupied with the strategies and tactics of warfare, the duration and cost of the war, Iraq’s military response, including the possible use of weapons of mass destruction, and the likely number of casualties within the invading armies.⁴⁰

It has been argued before that the UN Security Council had options in the implementation of economic sanctions. The political contingencies explained above are specific to the work of political organs such as the Security Council, and hence limit them in their ability to address issues, such as the imposed sanction regime on technical grounds. In this regard one institutional lapse is that the UN Charter allows the imposition of sanctions according to Article 41, while at the same time the Charter remains silent on the requirement for the elaboration and implementation of such complex measures. This is a significant difference and shortcoming compared to the requirement set forth in Article 47 of the Charter concerning the deployment of

³⁸ See, inter alia, Tim Niblock, ‘Irak, Libye, Soudan: efficacité des sanctions?’, in *Politique Étrangère* 1 (2000), 95-107, at 97.

³⁹ The UN Security Council refused to legitimize the US/UK decision to go to war against Iraq on the basis of UN Security Council resolution 1441 of November 2002. The majority of governments represented in the Security Council in March 2003 did not accept that Iraq was in material breach of this resolution. See also Alain Dejammet, ‘Ambiguities of UNSC 1441: Constructive and Not’, in Jochen Frowein et al. (eds.), *Verhandeln für den Frieden. Negotiating for Peace*, (Berlin: Springer Verlag, 2003) 19-23.

⁴⁰ On 31 July and 1 Aug. 2002, the US Senate Foreign Affairs Committee called over 30 witnesses to Washington. This briefing dealt overwhelmingly with issues of war and its costs, military occupation and weapons of mass destruction and hardly at all with post-war issues.

peacekeeping forces, for which the UN Secretariat created a whole department.⁴¹ Nevertheless, the UN Security Council ultimately seemed to have had no options for preventing individual members of the Council from carrying out the unilateral action of going to war. On the other hand, the two governments and their parliaments that had approved the invasion of Iraq did have the option to choose what kind of a war they wanted to fight, and what kind of a peace they wanted to support afterwards. The issue which needed to be debated was not who would win this asymmetrical war. The answer was clear. But it seems that the question of how to proceed with some kind of nation building after official cessation of hostilities was not, or only inadequately, addressed.

3. Action Plan for a Post-War Iraq: Peace, Nation Building and Its Discontent

Understanding Iraqi reaction to defeat, defining civilian priorities for the immediate period after the war, and anticipating the response by Shias, Sunnis, and Kurds to the invasion were issues either not discussed at all or considered of secondary importance.⁴² ‘While there may have been plans, none of these “plans” operationalized the problem beyond regime collapse.’⁴³ Iraqis’ pride in their ancient civilization, the importance of dignity in Arab culture, local values and mores only became issues after their neglect had created an enormous backlash for the invading armies and the civil administrations that followed. At that point, the winning of the ‘hearts and minds’ of the Iraqis had become another battle and as it turned out, a losing battle.

There was a high price to be paid for this fundamental shortsightedness, first and foremost by the Iraqi people, but also by the invading armies and foreign civilian personnel. Instead of a welcome to liberators, there came armed and increasingly organized resistance to occupiers. This can be attributed to a great extent to the non-existence of emergency reconstruction plans for the collapsed infrastructure, such as water supply, electricity, and public security systems, as well as plans for nation building and reconciliation processes.

During the years of sanctions Iraqis had been deprived of all the basics of life: lack of electricity, shortage of water, largely non-existent sanitation, life-threatening lack of medical services, and poor housing facilities. Nearly 60 per cent of the Iraqi people were dependent on approximately 50,000 UN and governmental supply units, which constituted a complex humanitarian supply network system throughout the country. This system, however, collapsed with the start of hostilities, and entirely disappeared after the breakdown of the Iraqi regime. A speedy and sizeable reduction of these difficulties during the initial period after the war, combined with large scale employment creation programmes, could have convinced many Iraqis that progress was being made. None of this happened. As conditions worsened instead of improving, the number of angry and disillusioned citizens increased along with instability and insecurity.

⁴¹ See Claude Brüderlein, ‘Coping with the Humanitarian Impact of Sanctions: An OCHA Perspective’, New York 1998, available at www.smartsanctions.ch/Papers/OCHAPerspective.pdf, accessed 31 Dec. 2004.

⁴² Reports on likely post-war scenarios and needs can be found in ‘Likely Humanitarian Scenarios’, UN Document, 10 Dec. 2002, obtained through www.casi.org.uk/info/undocs/war021210scanned.pdf; Rhoda Margesson and Johanna Bockman, ‘Potential Humanitarian Issues in Post-War Iraq: An Overview for Congress’, Congress Research Service, 18 Mar. 2003, and ‘War in Iraq: Managing Humanitarian Relief’, International Crisis Group, Amman / Brussels, 27 Mar. 2003.

⁴³ This is the conclusion of Major Isaiah Wilson, official historian of the US Army, as reported by the Washington Post, 25 Dec. 2004.

The period of looting in Baghdad and other cities across Iraq, especially the thefts of ancient artefacts from the Museum of Antiquities and the burning of the national library in the capital, evoked a strong reaction from the population. They felt that their identity and the core of their ethos had been attacked. As pictures emerged of US soldiers watching these thefts without intervening, it became known that the invading armies had protected selected ministries, such as the ministries of oil and the interior, but had destroyed or severely damaged others, such as the ministries of health, social welfare and education. Anger and consternation increasingly turned to hatred and the willingness to resist the 'invaders'. This inaction of the occupying army was apparent despite the knowledge of the very basic core conceptual framework for sustainable peace building. Peace is principally built of four main pillars, namely unity, well-being, security, and respect,⁴⁴ all of which have been disregarded in post-war Iraq. Additionally, public sentiment worsened rapidly in the second half of 2003 as a result of the heavy handedness of the US civil administrator and his staff, and their fundamental errors of judgment. The entire Iraqi army was demobilized and converted into an army of unemployed able bodied men, and de-Ba'athification⁴⁵ resulted in many civil servants and others working in the public sector losing their jobs. At the same time, lucrative contracts were awarded to foreign, primarily US companies, without possible Iraqi association. Oil-for-Food Programme funds handed over by the United Nations to the US interim administration were not accounted for in a transparent, and for the public understandable manner, and their impact was not felt. Non-Iraqis often headed 'Iraqi' delegations to international meetings,⁴⁶ and privatization and foreign investment regulations were unilaterally introduced to the perceived disadvantage of Iraqis. Before sovereignty has been officially handed over to the Iraqi interim authority, hence during the time of occupation, provisions such as Coalition Provisional Authority Order 39⁴⁷ have been introduced, changing existing Iraqi statutes and therefore violating provisions set forth in Article 43 of the Hague Regulations on the laws on land warfare.⁴⁸ Moreover, profits by non-Iraqi enterprises could be transferred abroad without any local reinvestment or taxation.

The humiliating behaviour of members of the US military in their house searches (breaking doors, entering houses with dogs, hooding male members of households, frisking females), and the revelation of torture and extreme humiliation of male and female prisoners, not just in Abu Ghraib but also in other detention centres in Iraq, was to Iraqis further evidence that the occupiers of their country were first and foremost concerned with their own political, economic, military and security interests, and did not care much for Iraqi welfare and post-war reconstruction.

⁴⁴ See John Paul Lederach, 'Building Peace. Sustainable Reconciliation in Divided Societies', 5th Edition, (Washington: United States Institute for Peace, 2002) especially 23-35.

⁴⁵ The Iraqi Ba'ath party consisted of a five-tier structure. While it was not mandatory to belong, there was pressure to join the party, particularly on civil servants. After the 2003 war, the US civil administration dismissed not just the entire Iraqi army but anyone who had been a member of the Ba'ath party at whatever level. This approach was later given up as unrealistic.

⁴⁶ As examples, an Iraqi delegation negotiating possible World Trade Organisation membership in Geneva was headed by a US official, and at the Amman Economic Forum, Iraq was represented by US Administrator Paul Bremer.

⁴⁷ See Coalition Provisional Authority Order Number 39, 19 Sept. 2003, Section 3(1).

⁴⁸ Article 43 reads in substantive parts: 'power having in fact passed into the hands of the occupant, the latter shall take all measures in his power to restore, and ensure... public order and safety, while respecting... the laws in force in the country', see 1907 Hague Convention IV 'Respecting the Laws and Customs of War on Land.' See also Edmund Schwenk, 'Legislative Power of the Military Occupant under Article 43, Hague Regulations', (1944-1945) 54 *Yale Law Journal*, 393-416; the case of *El Nazer et al. v. Commander of the Judea and Samaria Region* (H.C.285/81), (1983) 13 *Israel Yearbook on Human Rights* at 369.

All of this created an atmosphere of disillusionment, and the rejection by extreme elements of the positive efforts on the part of the interim government and US authorities to improve socio-economic conditions. The March 2003 war and the poor handling of the period after the war resulted in a life of deprivation for the average Iraqi that, to date, has not materially changed from life under economic sanctions. Fear had been a latent feature of life during the years of dictatorship; the war and post-war period have created conditions under which fear has become an overt aspect of daily living. The fertile ground for insurgency will remain as long as these conditions exist and as long as Iraqis believe that they are controlled remotely and are not free to decide how to conduct their lives in the post-Saddam Hussein era. The manner in which the current interim Government of Prime Minister Ayad Allawi has been chosen, its obvious lack of independent decision making powers in the conduct of national affairs, and the Prime Minister's false and repeated portrayal of progress in Iraq have intensified the suspicion among Iraqis that their sovereignty is being squandered.

4. Truth and Reconciliation

It is tempting to argue the case for the establishment of a national truth and reconciliation commission in Iraq. Such a commission could go a long way towards starting a national healing process.⁴⁹ Part of such a process would have to be responsible use of justice for all those in prominent positions in the Government of Saddam Hussein and the exoneration of the others. It would also have to include the immensely difficult reconciliation between the northern areas of Iraqi Kurdistan and the Arab centre and south, as well as between the Shi'ite clerics and secular groupings. This calls for a national leader of extraordinary qualities and competence who has yet to emerge.

As long as there is direct and indirect outside interference, as distinct from international cooperation, and as long as the basic conditions of security do not prevail, there will be no chance for such an approach. The current power vacuum, in which a national administration exists but is perceived as a front for foreign interests, means that security will not improve and therefore national reconstruction will not be possible beyond, at best, little clusters of physical improvements. These will not have the political ripple effect which would make a fundamental difference in the psychology of the national situation. The end of January elections could set in motion a national healing process. At this point it is questionable if and under which circumstances they will take place, and whether they will be country-wide rather than only partial elections in those areas of Iraq where enough security exists.⁵⁰ An essential ingredient of reconciliation would be that Iraqis should be left alone in the preparations for elections and the subsequent formation of government. This, too, is only marginally the case. Continental Europe, countries in the Middle East, Turkey and Russia will have to become much more and visibly involved in impressing on the governments of the United States and the UK that their approach to Iraq should change. This should include the withdrawal of their troops. The claim that such withdrawal would lead to civil war and the

⁴⁹ For a comprehensive view see Alex Boraine, 'A Country Unmasked', (Oxford: Oxford University Press South Africa, 2000); David Dyzenhaus, 'Judging the Judges, Judging Ourselves; Truth, Reconciliation and the Apartheid Legal Order', (Oxford: Hart Publishing, 1998); and Benjamin N. Schiff, 'Do Truth Commissions Promote Accountability or Impunity? The Case of the South African Truth and Reconciliation Commission', in Cherif M. Bassiouni, (ed.) *Post-Conflict Justice* (New York: Transnational Publishers Inc., 2002) 325-45.

⁵⁰ See 'Allawi: All of Iraq won't vote', UN Wire: E-Mail News Governing the United Nations and the World, 12 Jan. 2005. Please note that this article was finalized at the beginning of January 2005, before the Iraq elections.

disintegration of Iraq is part of a powerful misinformation campaign. Kurds, Sunnis and Shias have co-existed for centuries. Close to a million Kurds live in Baghdad, making it the largest 'Kurdish' city anywhere. Shias, Sunnis, Kurds and other minorities have intermarried, lived together in mixed neighbourhoods, shared workplaces, served in the Iraqi Foreign Service and the military, and participated in politics. This does not mean that Iraq is a country with total ethnic and religious harmony. There were and are ethnic and religious differences, and political confrontations have been fuelled by these differences. The years of dictatorship witnessed the misuse of power and the victimization of Kurdish and Shia communities. Being a Kurd or Shia in itself, however, was not a cause of *political* persecution; opposition to Saddam Hussein and his government was. Sunnis who were working against the regime were therefore equally subjected to punishment. Occupation and external meddling harbour the distinct danger that relations between these groups will be re-defined and become more and more determined by ethnic and religious identities. *'Divide et impera'* is nothing new in political history. This lends urgency to the call for the withdrawal of foreign troops and an end to the massive political involvement of foreign powers in Iraq's internal affairs.

To identify such demands is not difficult, to translate these into a new agenda of relationships between Iraq and the international community is. The US and UK authorities would see this as a major political defeat, and those presently in power in Iraq as the end to their ascribed leadership. For these reasons alone there will be powerful and sustained opposition to anything that changes the present political paradigm. National and international political leaders must nevertheless have the courage and the sense of urgency to work in this direction as otherwise the Iraqi cataclysm will continue.

5. The Iraq Experience and the Quest for a Reform of International Bodies

At the same time, the existing incapacity of the international machinery to handle complex issues such as the Iraq crisis must be addressed to avert a recurrence of similar crises elsewhere, and to allow a comprehensive handling of terrorism. The preoccupation with terrorists, rather than with terrorism and its causes, will ultimately do little to improve global security.

Large-scale reforms of international structures and global application of norms relating to justice, tolerance, and equal opportunity must become part of the international agenda. This points to the urgency of broad-based reforms of the United Nations. The reform debate will have to include clarification of many fundamental issues, which have plagued the international community for a long time. Among them should be a functional division of labour between the International Court of Justice and the UN Security Council. A Security Council holding legislative, judicial, and executive responsibilities, as is presently the case, produces counterproductive conflicts of interest. One case brought before the International Court of Justice (ICJ) tried to raise the spectre of political actors executing powers *mala fides* and *ultra vires*. In the Libyan case, the applicant asked the ICJ to find that there were reasons to believe that the Security Council might have exceeded its Charter-delegated powers by imposing sanctions.⁵¹ Furthermore, the enlargement of the UN Security Council is a vital part of a

⁵¹ See 'Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya vs. US), Request for the Indication of Provisional Measures, General List No. 89 (Order of 14 Apr.), Declaration of Judge Ni', International Court of Justice; and UN Charter Article 92. For a deeper examination of this question see also Thomas M. Franck, 'The "Power of Appreciation": Who is the Ultimate Guardian of UN legality?', (1992) *American Journal of International Law* 86, 519-23.

comprehensive UN reform. The Commission appointed by UN Secretary General Kofi Annan has recently come up with various proposals to add permanent and non-permanent members to the existing Council of fifteen members. The proposed enlargement is reminiscent of a refined caste structure, with various layers of permanent members, some with veto rights, others without, and non-permanent members being elected to the Council for varying periods of time. This will hardly be acceptable to the community of nations, as it perpetuates inequality of membership. Enlargement needs to be looked at from a different angle than merely increased government membership. Global human security, and global environment and development issues have become the top international concerns. Why could not non-governmental organizations with extensive experience in these areas become part of a reformed Security Council? The immediate and forceful rejection, especially by unilateralists, of such a proposal as utopian and therefore unworthy of consideration should not be allowed to prevent a debate. However, such a debate should of course contain the question of the representation and accountability of relevant NGOs; from a democratic point of view, unlike for example governments, they do not have a mandate for representation from voters. Hence the question who is actually represented by a NGO must be addressed and answered thoroughly.

In the context of the reform debate, the question that needs an immediate answer is: What steps for reform have to be taken, by whom and when? Before this question can be answered, the international community will have first to clarify the roles international organizations such as the United Nations should be expected to play in order to stay relevant, what structures are needed to play these new roles and what networks have to be created to foster peace and security.

6. Concluding Recommendations

The challenge to any reform of international structures will be the willingness of superpowers to operate within a multilateral framework and to accept international law. In the case of Iraq, it must be remembered, the United States as the dominant global power in this era decided to step outside this multilateral framework and determine its approaches on a unilateral basis. The establishment of the no-fly-zones, Operation Desert Fox in December 1998,⁵² and the March 2003 war are straightforward examples of such unilateralism. There are less well known examples of multilateral decision making prompted by unilateral determination. The designs of the compensation machinery to handle claims from parties victimized by Iraq's invasion into Kuwait,⁵³ and the sanctions bureaucracy⁵⁴ to manage the Oil-for-Food Programme must be identified in this respect. Even more difficult to gauge is the unilateral forcefulness of resolution making in the UN Security Council.

Key Iraq resolutions⁵⁵ were seemingly 'negotiated' in the Council but were in fact driven by individual governments and ultimately accepted on a consensus basis by the

⁵² For a short explanation see Kenneth Katzman, 'Iraq: Weapons Programs, UN Requirements, and U.S. Policy'. Congress Research Service Issue Brief for Congress, 2 Sept. 2003, at 2.

⁵³ It was US government pressure that created the UN Compensation Commission in Geneva. While the UN Security Council had recommended on previous occasions that countries pay compensation for damages they had caused to other countries, Iraq was the first case of a country for which the UN Security Council worked out the details of compensation, decided that Iraq should provide 30 per cent of its oil revenue for compensation, and enforced this policy.

⁵⁴ The UN Security Council Sanctions Committee, instead of overseeing policy implementation, micro-managed, under US/UK pressure, the procurement of humanitarian supplies.

⁵⁵ These include UN Security Council resolutions 687 (1991), 1284 (1999) and 1483 (2003).

Security Council. Over the years it became a pattern of US diplomacy to draft Resolutions, not only, but particularly on Iraq, in a manner of 'constructive ambiguity', leaving enough room for other Security Council members either to agree or abstain, but not to veto a resolution,⁵⁶ while the United States themselves could interpret the resolution in a way that accused Iraq of disregarding previous UN resolutions. Security Council resolution 1441 is a prominent example of 'constructive ambiguity'. Hence, there have been Iraq resolutions with abstentions by permanent members, or dissenting votes by elected members, but there has not been a single resolution that has been defeated by the veto of a permanent member. This is not an example of successful diplomacy but rather an example of successful power politics. Furthermore, it demonstrates the weakness of the current multilateral machinery.

The international community has an opportunity to learn much from the case of Iraq. It can be said unequivocally that comprehensive economic sanctions are not just blunt instruments, as they have often been called. They are tools which have inflicted significant damage to innocent civilians and therefore should not be used any more.⁵⁷ Linking economic sanctions with a military embargo holds a population responsible for the acts of its government. If there is indeed genuine concern for the welfare of ordinary people who have nothing to do with the conflict, such linkage should not be introduced in the future. Instead, rigorous oversight on the part of the UN Security Council of imports into Iraq could have allowed a much more liberal inflow of goods and services needed by the population. This oversight was lacking.

The normative and structural lack of preparedness of the international machinery, especially of the United Nations, to handle conflicts such as the one in Iraq, both before and after the wars of 1991 and 2003, must be fully comprehended as a first step towards remedial reforms. Global security, a major concern for all countries, must not be seen as an issue which can be handled with military might. The priority is human not military security. Of course, terrorists, those who endanger international security, have to be caught and brought to justice. However, in order to improve global and regional security, it is much more important to understand the causes of terrorism and act accordingly. The agenda for reform of the international machinery for peace, conflict resolution and international development remains formidable but is achievable if all nations, including the most powerful, accept multilateralism as the starting point.

⁵⁶ See Hans von Sponeck and Andreas Zumach, 'Irak. Chronik eines gewollten Krieges', (Cologne: Kiepenheuer & Witzsch, 2003) 40-1.

⁵⁷ In a report on sanctions published on 27 Jan. 2000 referring to the human conditions in Iraq, the UK House of Commons concluded that it is hoped that there would never be another case of comprehensive sanctions.