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INTERNATIONAL CONTROL OF IRAQI OIL: HOW THE OIL-FOR-FOOD PROGRAM FITS IN, AND IMPLICATIONS FOR THE FUTURE

*Dawn Bell**

"The international oil system started out as a setup to control a commodity, oil. Over the years and most recently under the direction of the United States, that has metamorphosed into a form of people control."¹

I. INTRODUCTION

The prevalence of oil in Iraq has led to two divergent consequences. Oil has enhanced Iraq's wealth, resulting in an improved quality of life; simultaneously it has heightened world-wide attention on Iraq, resulting both in conflict and in an inability of Iraqis to shape their own future absent international involvement. Before the discovery of oil at the end of the nineteenth century, Iraq was economically underdeveloped.² Oil revenues have played a large role in changing the economic, social and physical contours of the area. Mohamed Almulhim, a renowned Iraqi political scientist, remarks that "amid a society awakened, enlivened, and enriched by this sudden access of wealth, [g]overnments could improve their social services, their schools and colleges, hospitals, water-supply . . . oil wealth could, and did, open the door to higher standards of living."³ However, Almulhim also recognizes that "the development of the oil resources in the Middle East has involved to an excessive degree the actual employment of

* J.D. University of Richmond School of Law, May 2005; B.A. University of Virginia, May 2002. The author would like to sincerely thank all of the staff of the *Richmond Journal of Global Law and Business*, her family, and her husband, Jason Williams, for their help and support.

¹ STEPHEN PELLETIERE, *IRAQ AND THE INTERNATIONAL OIL SYSTEM: WHY AMERICA WENT TO WAR IN THE GULF* 223-24 (2001).

² MOHAMED BIN ABDUL LATIF BIN MOHAMED ALMULHIM, *MIDDLE EAST OIL: A REDISTRIBUTION OF VALUES ARISING FROM THE OIL INDUSTRY* 26 (1991) (quoting STEPHEN LONGRIGG, *OIL IN THE MIDDLE EAST: ITS DISCOVERY AND DEVELOPMENT* (2d ed. 1961)).

³ *Id.* at 46. See also PETER R. ODELL, *OIL AND WORLD POWER* (7th ed. 1983). Odell remarks that the discovery of oil "has certainly produced a different Middle East from that which would otherwise have emerged." *Id.* at 186.

the military strategy by the home governments” of the large oil companies.⁴

Section II of this comment is dedicated to understanding the history of Iraq’s position in this international power struggle. Section III focuses on the Oil-for-Food Program implemented by the United Nations (U.N.), and Section IV interprets how the Oil-for-Food Program fits into the historical scheme of Iraq.

II. HISTORY

A. *Through a Clear Lens*

Modern Iraq was born from the declining Ottoman Empire. By the latter half of the nineteenth century, Britain had advanced into southern Iraq, stabilizing its position during World War I.⁵ One scholar theorizes that British involvement in Iraq during the War resulted from a desire to exploit oil resources. “A big question about World War I is why the Allies devoted so much time and resources to waging the fight in the Middle East. . . . [O]nly one explanation carries weight, that the British were determined to take control of the area because of its oil.”⁶

According to the Sykes-Picot Agreement of 1916, Great Britain retained control of southern Mesopotamia, thus consolidating its position in Iraq.⁷ Britain gained complete control of Iraq in 1920 after a meeting at San Remo.⁸ The Iraqi people reacted violently to this news; consequently, military rule was put in place until October 1920. Iraq gained independence in 1932, but Britain retained vestiges of control through a twenty-five year treaty giving it the right to maintain mili-

⁴ ALMULHIM, *supra* note 2, at 42.

⁵ LORENZO KENT KIMBALL, *THE CHANGING PATTERN OF POLITICAL POWER IN IRAQ, 1958 TO 1971*, at 54-55 (1972). See MARIAN KENT, *OIL AND EMPIRE: BRITISH POLICY AND MESOPOTAMIAN OIL 1900 – 1920* (1976) (discussing Britain’s historical interest in Iraq and Iraqi oil).

⁶ PELLETIERE, *supra* note 1, at 29. See generally JOHN BACHER, *PETROTYRANNY* (2000). Bacher argues that the presence of oil wealth also caused the Europeans to cling to their empires in the Middle East after the end of the War. *Id.* at 31. He notes that new states in other parts of the British Empire, such as the West Indies and India, were developing systems of democratic self-government. In contrast, the British did not encourage the development of a democratic system in the Middle East, but rather fostered autocracy in order to retain vital oil supplies. *Id.* at 49.

⁷ KIMBALL, *supra* note 5, at 55.

⁸ *Id.* at 56.

tary bases in Iraq and an Iraqi monarchy that was receptive to British wishes.⁹

The monarchy was overthrown in 1958, and a period of prolonged tension began, both within the country and in Iraq's relationship with other countries. Between 1958 and 1968, the leadership of the country changed hands four times.¹⁰ Following the Baathist takeover in 1968, Iraq achieved some political stability. Saddam Hussein became President of Iraq, Secretary-General of the Party, and Commander-in-Chief of the armed forces in 1979.¹¹

In the 1980's, a gruesome war between Iran and Iraq ensued. The conflict resulted in over 800,000 deaths, more than one million displaced people, and the intentional destruction of Iraq's infrastructure.¹² After a brief period of peace, Iraq invaded Kuwait in 1990. Although the conflict lasted only a few days, the repercussions would be felt well into the next two decades – partially through U.N. Security Council sanctions. The Kuwait invasion and U.N. intervention precipitated a United States-led attack on Iraq in March 2003. As a result of the attack, the Coalition Provisional Authority now controls the country, the sanctions have been retracted, and the Oil-for-Food Program has been dissolved.

B. *Through the Oily Film*

The oil industry is the world's largest industry. It plays an important role in international trade because of the physical separation of producing countries from regions of consumption.¹³ Consequently, the industry is intertwined with global political relationships. From its inception, the oil industry in the Middle East has been operated almost exclusively by foreign investors. Of the seven largest oil companies, at least five have their headquarters, their top management, and the majority of their shareholders in the United States.¹⁴

⁹ ABBAS ALNASRAWI, *THE ECONOMY OF IRAQ: OIL, WARS, DESTRUCTION OF DEVELOPMENT AND PROSPECTS, 1950-2010*, at 128 (1994).

¹⁰ Adeed Dawisha, *The Politics of War: Presidential Centrality, Party Power, Political Opposition*, in *IRAQ IN TRANSITION: A POLITICAL, ECONOMIC, AND STRATEGIC PERSPECTIVE* 21, 22 (Frederick W. Axelgard ed., 1986).

¹¹ *Id.* at 23.

¹² BACHER, *supra* note 6, at 56.

¹³ ODELL, *supra* note 3, at 11.

¹⁴ ALMULHIM, *supra* note 2, at 14. Of the seven predominant international companies, Standard Oil Company of New Jersey, Standard Oil Company of California, Socony-Mobil Oil Company, Inc., Gulf Oil Corporation, and the Texas Company are American companies. The other two, Anglo-Iranian Oil Company, Ltd., and the Royal Dutch-Shell group are British and Dutch.

Iraqi oil first became a concern of the major international actors¹⁵ in the years immediately preceding World War I.¹⁶ The Ottoman Empire first demonstrated its interest when the Turkish Caliph acquired ownership of the oil.¹⁷ Germany then secured the formation of the Berlin-to-Baghdad railway.¹⁸ According to the agreement, the Germans were able to exploit minerals for up to twenty kilometers on either side of the railroad tracks.¹⁹ The construction of the railroad commenced in 1904, but the Ottoman Empire experienced a revolt in 1908 and the railway project ended.²⁰ The Germans tried to revive the deal by transferring their interests to the Turkish Petroleum Company (TPC) in 1913.²¹

The TPC was established to acquire rights in Iraqi oil, and though it was initially granted the authority to exploit a limited amount of oil, following the outbreak of World War I the company temporarily ceased operations.²² In 1925, Iraq finally granted the concession to the TPC, which then changed its name to the Iraqi Petroleum Company (IPC).²³ The IPC is owned by five large international companies: the British Petroleum Company, the Royal Dutch-Shell Group, the Compagnie Francaise des Petroles, Standard Oil of New Jersey and the Socony Mobil Oil Company.²⁴

According to the terms of the original concession, Iraq was to receive 10% of the profits of the company that would be formed to exploit the oil.²⁵ When the Americans became party to the agreement, however, they wanted the IPC to be a non-profit organization. The oil companies would not sell the crude oil in the open market, but would pass it through their own refineries.²⁶ The Iraqis were not pleased with this determination—a ten percent profit share is a meaningless term to a non-profit organization.²⁷ Ultimately Iraq simply received royalties based on the volume of exported oil and had no voice in gov-

¹⁵ Great Britain, the United States, France, Germany, and the Ottoman Empire.

¹⁶ ALMULHIM, *supra* note 2, at 135. For a discussion of the concession system, nationalization, and the role of the oil sector in the Iraqi economy, see KADHIM A. AL-EYD, OIL REVENUES AND ACCELERATED GROWTH: ABSORPTIVE CAPACITY IN IRAQ 10-40 (1979).

¹⁷ ODELL, *supra* note 3, at 31.

¹⁸ PELLETIERE, *supra* note 1, at 25.

¹⁹ *Id.* at 24-26.

²⁰ *Id.*

²¹ *Id.* at 26.

²² ALMULHIM, *supra* note 2, at 145.

²³ *Id.* at 144.

²⁴ *Id.* at 17 n.25.

²⁵ PELLETIERE, *supra* note 1, at 65.

²⁶ *Id.* at 65-66.

²⁷ *Id.* at 66.

erning the companies.²⁸ The concession system not only put Iraq in a position of being unable to fully exploit its resources, but it also placed the country at the mercy of decisions made by outside investors. The foreign companies were insulated from the local economy, and as a result, they determined output by considering international, instead of local, conditions.

Following a revolution in 1958, Abdul Qarim Qasim became the leader of the Iraqi nation.²⁹ He expressed to the IPC his desire for 20% participation in the company and the rights to the acreage that had not been exploited.³⁰ Even though the two sides engaged in extensive discussion, negotiations broke down after Qasim increased the percentage of dues that Iraq received from exported oil.³¹ In retaliation, Qasim published Public Law 80 on December 11, 1961, which retracted the rights to 95% of the land that had not been exploited by the companies.³² A coup instigated by the Baath party in 1963 resulted in the death of Qasim and the ascendancy of Abdul Aref, who designed a scheme to develop all of the land appropriated by Public Law 80 through the Iraqi National Oil Company.³³ In 1968, the Baath party staged another coup, and subsequently implemented Aref's scheme.³⁴ The government in place was also able to work out an arrangement with Russia whereby the Soviet countries exchanged their expertise for Iraqi oil.³⁵

The changes in Iraq's oil policies were indicative of a larger global trend. The Organization of Petroleum Exporting Countries (OPEC) was formed on September 14, 1960, in an effort by five countries to enhance their bargaining power by standing together.³⁶ The countries believed that by adhering to policies as a group, they would prevent the oil companies from playing one country off another.³⁷ In 1973, OPEC was able to implement this plan and take advantage of a tight supply situation, creating the oil crises of 1973 and 1974.

The realization by oil-producing countries of their potential influence in the global stage was not solely manifested in the formation of OPEC. The Middle Eastern countries used oil as a "weapon" during

²⁸ *Id.* at 67.

²⁹ *Id.* at 124.

³⁰ *Id.* at 126.

³¹ *Id.*

³² *Id.* at 127.

³³ *Id.* at 132, 134. See KIMBALL, *supra* note 5, at 108-18.

³⁴ PELLETIERE, *supra* note 1, at 135.

³⁵ *Id.*

³⁶ ALMULHIM, *supra* note 2, at 76. The first meeting of OPEC was an assembly of representatives from Iran, Iraq, Kuwait, Saudi Arabia and Venezuela. *Id.*

³⁷ ODELL, *supra* note 3, at 21.

the Suez War of 1956, significantly affecting the global economy.³⁸ However, by the Six Day War of 1967, the Middle Eastern countries seemed to have abandoned their earlier approach.³⁹ A new strategy of supporting various causes with money from the oil industry emerged.⁴⁰ This development helped build regional cohesion and strengthened prevailing ideologies.

Iraq was experiencing inner turmoil while these worldwide events were occurring. It was not until 1968 that the political climate of Iraq stabilized under the Baath Party's leadership, notwithstanding the fact that the regime was soon to become a dictatorship.⁴¹ Some academics argue that oil profits were a motivating factor in the evolution of Iraq into a dictatorship. Modern dictatorships in oil-producing countries have similar characteristics: oil provides an abundant form of wealth for repressive governments, because the income is not obtained through taxation; and independent labor movements, which have been critical in crushing despotism in many states, can be easily bought off with the surplus profits.⁴²

With a somewhat stable government and reassurance of its power in the international realm, Iraq aimed its policy in the 1970's at "industrial diversification, agricultural self-sufficien[cy], infrastructural development, and improvements in social services and education, while attempting to move away from an oil-based economy."⁴³ Regarding oil, the Iraqi government took back much of the land the country had previously given to the IPC, and expanded the activities of the Iraqi National Oil Company.⁴⁴

Much of the internal growth that had occurred during the 1970's ground to a halt with the commencement of the war with Iran. Oil was a motivating factor in much of the damage done in this conflict. A tanker war began in 1984, damaging shipping oil, and many

³⁸ *Id.* at 22.

³⁹ *Id.* at 194. Odell notes that "the Middle Eastern oil-producing nations appeared by 1967 to have made up their minds that, in both the short and the long term, they themselves were likely to suffer the most from simply holding the world ransom over oil." *Id.*

⁴⁰ *Id.* at 194-95.

⁴¹ KIMBALL, *supra* note 5, at 144-61. For a discussion of the stability of the period, see Dawisha, *supra* note 10, at 21-32.

⁴² BACHER, *supra* note 6, at 20 (remarking that independent labor movements have overturned dictatorships in such countries as Poland and South Africa, and citing the Congo, Brunei, Angola, and many of the Middle Eastern Countries as remaining 'havens' of dictatorship).

⁴³ Jonathan Crusoe, *Economic Outlook: Guns and Butter, Phase Two?*, in *IRAQ IN TRANSITION: A POLITICAL, ECONOMIC, AND STRATEGIC PERSPECTIVE* 33, 39 (Frederick W. Axelgard ed., 1986).

⁴⁴ ODELL, *supra* note 3, at 94.

attacks focused on the pipeline facilities of the opposing country.⁴⁵ The international community began to perceive Iraq as a threat to global security soon after the hostilities began between Iran and Iraq.⁴⁶

International tolerance, which had been thinning throughout the Iran-Iraq conflict, came to an abrupt end when Iraq invaded Kuwait in August 1990. The invasion resulted in the First Persian Gulf War and the imposition of economic sanctions by the U.N. Security Council.⁴⁷ During the Gulf War, Iraq was bombed for six weeks, and the U.N. mission reported that “[t]he recent conflict had wrought near-apocalyptic results upon what had been, until January 1991, a rather highly urbanized and mechanized society. Now, most means of modern life support have been destroyed or rendered tenuous. Iraq has, for some time to come, been relegated to a pre-industrial age.”⁴⁸ Turmoil has since increased, and Iraq refused to let the U.N. weapons inspectors back into the country in 1998.⁴⁹ The United States attempted to coerce Baghdad into allowing the inspectors to return by conducting over six hundred strikes against more than one hundred targets between December 15 and 19, 1998.⁵⁰

The Iraqi government launched a campaign in 1999 to increase the production of aging oil fields, so as to compensate for their declining capacity.⁵¹ Iraqi authorities warned foreign investors that they would lose their fields unless they disregarded the sanctions regime. In 2001, Iraq followed through on its threat and began developing a

⁴⁵ Frederick W. Axelgard, *War and Oil: Implications for Iraq's Postwar Role in Gulf Security*, in *IRAQ IN TRANSITION: A POLITICAL, ECONOMIC, AND STRATEGIC PERSPECTIVE* 1, 3 (Frederick W. Axelgard ed., 1986).

⁴⁶ See, e.g., Danielle L. Simmons, Book Note, *Iraq Under Siege: The Deadly Impact of Sanctions and War*, 25 *SUFFOLK TRANSNAT'L L. REV.* 275, 279 (2001).

⁴⁷ *Id.* at 280. Resolution 661 established sanctions, and Resolution 687 formulated additional requirements that Iraq must meet for the United Nations to lift the sanctions are lifted.

⁴⁸ ALNASRAWI, *supra* note 9, at 119 (quoting *The Report to the Secretary General on Humanitarian Needs in Kuwait and Iraq in the Immediate Post-Crisis Environment by a Mission to the Area Led by Mr. Matti Ahtisaari, Under Secretary-General for Administration and Management*, U.N. SCOR, 46th Sess., at 5, U.N. Doc S/22366 (1991), available at <http://www.un.org/Depts/oip/background/reports/s22366.pdf>).

⁴⁹ Steven Montgomery, *Iraq: The World Community's Response to a Troubled Nation*, 18 *N.Y.L. SCH. J. HUM. RTS.* 507, 507-08 (2002).

⁵⁰ Michael L. Cornell, Comment, *A Decade of Failure: The Legality and Efficacy of United Nations Actions in the Elimination of Iraqi Weapons of Mass Destruction*, 16 *CONN. J. INT'L L.* 325, 339 (2001).

⁵¹ Valerie Marcel, Briefing Paper, *The Future of Oil in Iraq: Scenarios and Implications*, ROYAL INST. INT'L AFF., SUSTAINABLE DEV. PROGRAM 5 (December 2002).

large southern oilfield, which was promised to a foreign company.⁵² Iraqi authorities have awarded twelve-year contracts to some oil companies so that they could immediately resume work once sanctions were lifted.⁵³

As a result of growing uneasiness with the harsh treatment of Iraq, the U.N. Security Council adopted "smart sanctions" in 2002.⁵⁴ If an item is on the review list, then the product can only be imported if weapons inspectors decided that the item would not be used for military purposes.⁵⁵ A good could be brought into Iraq without U.N. scrutiny if it was on the list.⁵⁶

Recent events in Iraq are certain to change its outlook for the future. On March 18, 2003, the United States bombed Baghdad, triggering a war with Iraq. Two months later, on May 22, 2003, the U.N. Security Council adopted Resolution 1483, which lifted civilian sanctions and provides for the termination of the Oil-for-Food Program and the transfer of responsibility to the Coalition Provisional Authority by November 21, 2003.⁵⁷

III. OIL-FOR-FOOD

A. Background

Following the Gulf War, the Secretary-General of the U.N. dispatched a mission to assess the humanitarian needs in Iraq.⁵⁸ Reports from that mission predicted dire consequences if humanitarian needs were not immediately addressed. In response, the U.N. proposed that Iraq sell oil for the requisite goods listed in Resolution 706.⁵⁹ Iraq initially refused the proposals, claiming, "the system planned for monitoring the distribution of humanitarian goods would constitute a violation of its sovereignty."⁶⁰ Finally, on April 14, 1995, Iraq ex-

⁵² *Id.*

⁵³ *Id.* at 5-6.

⁵⁴ Allison Ehlert, Note, *Between Empire and Community: The United States and Multilateralism 2001-2003: A Mid-Term Assessment: Minimum Public Order: Iraq: At the Apex of Evil*, 21 BERKELEY J. INT'L L. 731, 738 (2003).

⁵⁵ *Id.* The review list itemizes products that could be used to construct weapons, and spans over three hundred pages.

⁵⁶ *Id.*

⁵⁷ S.C. Res. 1483, U.N. SCOR, 57th Sess., 4761st mtg. at 4-6, U.N. Doc. S/RES/1483 (2003).

⁵⁸ Montgomery, *supra* note 49, at 508.

⁵⁹ *Id.* See S.C. Res. 706, U.N. SCOR, 46th Sess., 3004th mtg. at 21-22, U.N. Doc. S/RES/0706 (1991).

⁶⁰ Erica Cosgrove, *The Sanctions Dilemma and the Case of Iraq: Human Rights and Humanitarian Challenges to the Use of Multilateral Economic Sanctions*, 9 WINDSOR REV. LEGAL & SOC. ISSUES 65, 88 (1999).

pressed its willingness to participate in the Program and the U.N. Security Council established the Oil-for-Food Program with Resolution 986.⁶¹ The Program was meant to be a temporary solution until the Iraqi government complied with the earlier Resolutions.⁶² It was not until 1996, however, that the Iraqi government and the U.N. were able to come to an agreement, entitled the Memorandum of Understanding.⁶³ In December 1996, the first oil was shipped out of the country.⁶⁴ The food from these early efforts began arriving in the spring of 1997.⁶⁵ The Program ran in "phases" of 180 days, and the U.N. Security Council had to approve of the Program anew each time the previous phase ended.⁶⁶

Initially, there was a cap on the amount of oil that Iraq could sell. At first, it was limited to \$2 billion worth of oil every six months, raised to \$5.26 billion in 1998, and, finally, the ceiling was dropped in 1999.⁶⁷ Originally, 66% of the revenues were allocated to the humanitarian program and the Compensation Commission received 30%.⁶⁸ This allocation was lowered to 25% in 2000 because of humanitarian concerns.⁶⁹ The proceeds from the Program are kept in a U.N. escrow account, and though the government brokers the deals, the money is only used to buy items that have U.N. approval.⁷⁰ While most of the funds are used to obtain food, the U.N. also encourages the purchase of goods that benefit infrastructure and telecommunications.

With the onset of the Second Persian Gulf War, the Security Council modified the Oil-for-Food Program in accordance with Resolution 1472, giving the Secretary-General the authority to address the current humanitarian needs.⁷¹ Prior to the cessation of that author-

⁶¹ Office of the Iraq Programme, *About the Programme*, at <http://www.un.org/Depts/oip/background/index.html> (last visited Nov. 4, 2003) [hereinafter *About the Programme*].

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Office of the Iraq Programme, *Phases of the Programme*, at <http://www.un.org/Depts/oip/background/phases.html> (last visited Nov. 3, 2003).

⁶⁷ *About the Programme*, *supra* note 61.

⁶⁸ Meredith DuBarry Huston, Comment, *Wartime Environmental Damages: Financing the Cleanup*, 23 U. PA. J. INT'L ECON. L. 899, 916 (2002).

⁶⁹ *Id.* at 916-17 ("By November 15th, 2001, the Commission had awarded nearly \$14 trillion in compensation to 1,506,458 claimants").

⁷⁰ John B. Judis, *Crude Calculus: Why Iraq Still Needs Oil-for-Food*, NEW REPUBLIC, May 19, 2003, at 14.

⁷¹ Office of the Iraq Programme, *Implementation of Oil-for-Food: A Chronology*, at <http://www.un.org/Depts/oip/background/chron.html> (last visited Nov. 3, 2003).

ity, the U.N. Security Council adopted Resolution 1483.⁷² This new Resolution declared an end to sanctions, gave Iraq the ability to resume oil exports, and heralded the nearing end of the Oil-for-Food Program.⁷³ In addition, the responsibility for the Program would transfer to the administration set in place by the occupying powers.⁷⁴

Since the adoption of Resolution 1483, U.N. personnel have labored diligently to ensure that the transition proceeds smoothly, but they work in a dangerous environment. On August 19, 2003, Sergio Vieira de Mello, the special representative of the Secretary-General, was killed, along with at least twenty-three others, when suicide bombers drove into the U.N. compound in Baghdad.⁷⁵ In addition, eighty-six other workers had to be airlifted out of the country to receive medical attention.⁷⁶ The outbreak of violence has prompted members of the U.N. Security Council to demand an accelerated time schedule for surrender of the Coalition Provisional Authority's control in Iraq. The deputy ambassador from France expressed his desire that "one must give back to the Iraqis their sovereignty within the framework of an accelerated timetable and clear sequence of events."⁷⁷ A number of U.N. members echoed these statements.⁷⁸

B. Impacts

The Oil-for-Food Program is the largest assistance program in the world, in terms of its dollar value, and it has been one of the principal activities of the U.N. in recent years.⁷⁹ Most commentators, while recognizing the success of the Program, emphasize its inability to alleviate the widespread suffering caused by the sanctions.⁸⁰ Although the Oil-for-Food Program has made a difference in the everyday lives

⁷² *Id.*

⁷³ S.C. Res. 1483, *supra* note 57, at 4, 6.

⁷⁴ *Id.*

⁷⁵ *Envoy Gets Sad Farewell in Iraq; 3 British Soldiers Killed in Basra*, CHI. TRIB., Aug. 24, 2003, at C4.

⁷⁶ *Id.*

⁷⁷ *Coalition Partners Brief Security Council on Situation in Iraq, Calling for Stepped up International Involvement, Enhanced Security*, U.N. SCOR, 57th Sess., 4812d mtg., U.N. Doc. SC/7851 (2003) [hereinafter *Security Council Briefing*], at <http://www.un.org/News/Press/docs/2003/sc7851.doc.htm>.

⁷⁸ *Id.*

⁷⁹ Richard Garfield, *Health and Well-Being in Iraq: Sanctions and the Impact of the Oil-for-Food Program*, 11 TRANSNAT'L L. & CONTEMP. PROBS. 277, 278 (2001).

⁸⁰ *See, e.g., id.*

of Iraqis, it was not meant to be a substitute for the normal economic activity of a nation.⁸¹

As a result of the Oil-for-Food Program, Iraq has received \$28 billion in humanitarian supplies and equipment.⁸² With the Program providing such an abundant and accessible influx of resources, Saddam Hussein recognized an opportunity to pirate its potential wealth for personal gain. Reports emerged stating that his regime demanded kickbacks from purchasers and bought most of its goods from countries whose support it sought.⁸³ In addition, some evidence exists that Iraq was able to develop weapons of mass destruction by purchasing chemicals bought through the Oil-for-Food Program.⁸⁴

Despite possible advantages to the Iraqi government, there was a serious reduction in communicable diseases and malnutrition because of the Oil-for-Food Program.⁸⁵ The Program also aided in agriculture, energy, construction, education, and transportation.⁸⁶ Food production, as well as overall nutritional value, increased under the Program.⁸⁷ The improved access to food and the increased quality of the available food led to a decrease in malnutrition.⁸⁸ Visits to hospitals and medical centers increased, because the equipment in the centers and the transportation to the hospitals improved.⁸⁹ The amount of safe drinking water and electricity also rose.⁹⁰

In a recent report on the Oil-for-Food Program, the Secretary-General of the U.N. maintained an optimistic tone. He highlighted major improvements, but along with each success, there was the undertone of inadequacy. For example, when the Secretary-General discussed water treatment, he stated that the purity and availability of drinkable water had increased tremendously.⁹¹ However, the water-treatment facilities require a constant supply of spare parts, which

⁸¹ *Report of the Secretary-General Pursuant to Resolutions 1447 (2002), 1472 (2003) and 1476 (2003)*, U.N. SCOR, 57th Sess., at 26, U.N. Doc. A/S/576 (2003) [hereinafter *Secretary-General's May 2003 Report*].

⁸² *About the Programme*, *supra* note 61.

⁸³ Judis, *supra* note 70. Judis notes that most of the goods were bought from Russia, France, and other Middle Eastern countries.

⁸⁴ Jamie Dettmer, *U.N. Aid Feeds Iraqi Weapons Program: A Department of Energy Report Reveals that Saddam Hussein is Exploiting the U.N. Oil-for-Food Program to Enhance His Weapons-Of-Mass-Destruction Capabilities*, INSIGHT ON THE NEWS, Dec. 31, 2001, at 25.

⁸⁵ *Secretary-General's May 2003 Report*, *supra* note 81, at 14.

⁸⁶ Garfield, *supra* note 79, at 280.

⁸⁷ *Id.* at 284.

⁸⁸ *Id.* at 285.

⁸⁹ *Id.* at 286-87.

⁹⁰ *Secretary-General's May 2003 Report*, *supra* note 81, at 16-20.

⁹¹ *Id.*

often do not correspond to specifications because they must be purchased from local dealers.⁹² In addition, educational supplies have improved the quality of education, but at the same time, there are many supplies that remain unusable because their complementary parts have not arrived.⁹³ Desks worth sixteen million dollars sit in a warehouse, awaiting their steel legs.⁹⁴ In his closing statement, the Secretary-General made the following plea: "I should like to appeal to all concerned to give absolute priority to the interests of the Iraqi people, who have suffered far too long. All necessary measures should be taken to normalize life for the Iraqi population."⁹⁵

The Oil-for-Food Program was severely affected by the onset of the Second Persian Gulf War.⁹⁶ There was a substantial funding shortage, and the international staff withdrew from the country, causing a temporary suspension of the Program on March 17, 2003.⁹⁷ The system's infrastructure was also badly damaged. Hospitals were looted, vaccines became ineffective because of power outages, and the public distribution of food and drugs were disrupted.⁹⁸ In addition, the suspension of the Program had a negative effect on the economy. The Secretary-General reflects that the Program "had generated a host of economic activities, including employment, and provided a revenue base for local administration. Its suspension meant that local contractors executing the projects had to lay off their workers."⁹⁹

According to Resolution 1483, the Oil-for-Food Program is to terminate in the fall of 2003. The Secretary-General affirms that progress is being made toward that goal and that the food-distribution mechanisms are back in operation.¹⁰⁰ However, in his report, he paints a grim picture of the situation in Iraq because of the conflict and the termination of the Oil-for-Food Program. He remarks that the lack of security fundamentally affects everyday life, because it hinders freedom of movement, economic and legal reform, and the development of an independent media.¹⁰¹ The health care system is operating

⁹² *Id.* at 16.

⁹³ *Id.* at 21.

⁹⁴ *Id.*

⁹⁵ *Id.* at 27.

⁹⁶ *Secretary-General's May 2003 Report*, *supra* note 81, at 1-3.

⁹⁷ *Id.* at 2.

⁹⁸ *Id.* at 3.

⁹⁹ *Id.* at 3.

¹⁰⁰ *Report of the Secretary-General Pursuant to Paragraph 24 of Security Council Resolution 1483 (2003)*, U.N.SCOR, 57th Sess., at 13, U.N. Doc. S/2003/715 (2003) [hereinafter *Secretary-General's July 2003 Report*].

¹⁰¹ *Id.* at 6.

at a fraction of its pre-war capacity, water treatment continues to be an issue, and electrical plants have been sabotaged.¹⁰²

The two reports of the Secretary-General make it clear that despite the advances made as a result of the Oil-for-Food Program, the Iraqi people are still in dire straits. Recent reports indicate that sixty percent of all Iraqi factories are closed, unemployment and poverty affect half the population, and nearly 20% of Iraqis live in extreme poverty.¹⁰³ Chronic malnutrition affects up to 25% of the population in some portions of the country.¹⁰⁴ As a result, "Iraq, which had been a country that provided an average standard of living by regional standards, has now become a country with substandard conditions in the economy, infrastructure, health care, education, standard of living for children."¹⁰⁵

IV. ANALYSIS

A. *Did Oil-for-Food Enhance the Legitimacy of Sanctions?*

The sanction regime has been severely condemned. One focus of the criticism is the legality of the sanctions as they applied to Iraq. After 1996, the Oil-for-Food Program, in part, mediated the effects of the sanctions regime. The Program, because it alleviated the suffering of the Iraqi people, calls into the question the arguments against the international legality of sanctions against Iraq.

The United Nations authorizes the use of sanctions in Article 41 of the U.N. Charter in order to penalize nations that are guilty of international law violations.¹⁰⁶ Further, U.N. Resolution 687 authorizes the use of drastic means to prevent Iraqi violations of international law.¹⁰⁷

The determination of whether the sanctions against Iraq are legal depends on the interpretation given to the U.N. Charter. Article 24(2) of the Charter provides that the Security Council must act consistently with the principles and purposes of the U.N., but this leaves room for interpretation.¹⁰⁸ While the Preamble lists preventing war and reaffirming human rights as important objectives, Chapter One lists guarding international peace and security as the first purpose of

¹⁰² *Id.* at 13.

¹⁰³ Garfield, *supra* note 79, at 279-80.

¹⁰⁴ Office of the Iraq Programme, *A Fact Sheet*, at <http://www.un.org/Depts/oip/background/fact-sheet.html> (last updated Sept. 23, 2003).

¹⁰⁵ Montgomery, *supra* note 49, at 509.

¹⁰⁶ Simmons, *supra* note 46, at 281. See U.N. CHARTER art. 41, available at <http://www.un.org/aboutun/charter/>.

¹⁰⁷ S.C. Res. 687, U.N. SCOR, 46th Sess., 2981st mtg. at 11, U.N. Doc. S/RES/687 (1991).

¹⁰⁸ Cosgrove, *supra* note 60, at 69-70.

the U.N.¹⁰⁹ If these purposes are viewed as equally important, then it is arguably the case that the sanctions' failure to promote human rights is in direct conflict with the Charter.

Another argument against the legality of sanctions is that they do not follow the international law theory of proportionality.¹¹⁰ This principle requires that the use of force be in proportion to the initial violation. Although Iraq invaded Kuwait and used dangerous types of warfare in the Iranian conflict, the Iraqis were militarily "punished" in the Gulf War and at various other points during the 1990's. In addition, the U.N. destroyed many of their weapons of mass destruction, while the sanctions left Iraq without sufficient resources to rebuild its military strength.¹¹¹

More tenuous is the argument that the laws of war apply to the use of economic sanctions. These laws prohibit a country from starving civilians and causing a humanitarian disaster during a time of war.¹¹² By implication, since sanctions are part of a war strategy, the laws of war would prohibit such action during the imposition of sanctions.¹¹³

The Oil-for-Food Program potentially affects each of these three analyses. The first argument hinges on the logic that because the U.N. is not respecting the rights of the Iraqi people, sanctions are discordant with the U.N. Charter. By carrying out the Oil-for-Food scheme, however, the U.N. shows concern for the rights and the needs of the Iraqi people.¹¹⁴

The Oil-for-Food Program also tips the scales in the proportionality analysis. According to the proportionality theory, the U.N.'s reaction is excessively harsh in comparison to Iraq's actions; consequently, the outcome is so unfair as to be unlawful.¹¹⁵ The Program softens the edge to the U.N.'s actions, though, to make them seem less harsh. Fi-

¹⁰⁹ U.N. CHARTER pmb.; U.N. CHARTER art. 1, para. 1; U.N. CHARTER art. 1, para. 3, available at <http://www.un.org/aboutun/charter/>.

¹¹⁰ Cornell, *supra* note 50, at 328.

¹¹¹ *See id.*

¹¹² *See* Cosgrove, *supra* note 60.

¹¹³ *Id.* at 73. Cosgrove states that "many of the rules contained in the Geneva Conventions and Additional Protocols reflect the principle that if a population is not receiving adequate food and supplies, humanitarian action must be taken or permitted as quickly as possible." *Id.*

¹¹⁴ *See, e.g., id.*

¹¹⁵ Cornell, *supra* note 50, at 349-51. He notes that "any exercise of force under the U.N. Charter must conform to the common law requirement that the force be proportionate to the aggression or threat to which it is aimed at deterring." *Id.* at 349. Even without the mediating effect of the Oil-for-Food Program, though, Cornell theorizes that the sanctions may be proportionate to Hussein's ability to kill thousands of people with weapons of mass destruction.

nally, according to the "laws of war" analysis, the sanctions are in violation of international law because they starve civilians and cause humanitarian complications.¹¹⁶ Although the Oil-for-Food Program has not eradicated the humanitarian problems in Iraq, it has certainly ensured that more Iraqis were fed and have had their basic needs fulfilled. Therefore, if the sanctions are analyzed along with the Oil-for-Food Program, it is less likely that the U.N.'s actions will be found in violation of international law.

B. How does Oil-for-Food Fit into the Historical Framework?

Second only to Saudi Arabia, Iraq's confirmed oil reserves stand at more than 112 billion barrels.¹¹⁷ Some estimates put the amount of possible total reserves at more than 215 billion barrels.¹¹⁸ Combined with one of the lowest per-barrel production costs in the world, each barrel of crude oil in Iraq costs less than one U.S. dollar.¹¹⁹ Consequently, Iraqi oil has been the focus of international attention and has largely been subject to the control of foreign companies and states.

Before the sanction regime, Iraqi oil was often under the dominion of other states. Many analysts posit that oil is the cause of the current conflict between Iraq, the United States and Great Britain. Musa Ja'far asks, "Had it not been for oil, would the United States go out of its way and spend billions of greenbacks at its own cost to 'liberate' the Iraqi people?"¹²⁰ This worldwide skepticism has grown upon reports of the failure to find weapons of mass destruction and with the appointment of an American to supervise the restoration of Iraq's oil industry.¹²¹

How then does the Oil-for-Food Program fit into the historical scramble to control Iraqi oil? It is clear that the Iraqi government viewed the Program as impinging on their sovereignty and voiced their opposition a number of times. The first indication that Hussein's regime was opposed to the Oil-for-Food Program was in the government's complete rejection of the Program for five years.¹²²

¹¹⁶ See Cosgrove, *supra* note 60, at 72-73.

¹¹⁷ Gawdat Bahgat, *Oil Diplomacy: American Policy in the Persian Gulf*, 24 FLETCHER F. WORLD AFF. J. 143, 156 (2000).

¹¹⁸ *Id.*

¹¹⁹ Musa Ja'far, *News Analysis: Iraq's Oil Wealth, A Grace or a Curse?*, XINHUA NEWS AGENCY, May 15, 2003, available at 2003 WL 55566121.

¹²⁰ *Id.*

¹²¹ Judis, *supra* note 70, at 14. See also Elizabeth Sullivan, *Clarifying Murky Motives in Iraq*, PLAIN DEALER, June 29, 2003, at H5 (noting the discrepancies in the United States' reasons for commencing a war and its subsequent actions).

¹²² Cosgrove, *supra* note 60, at 86.

Additionally, in 1998, the Iraqi government threatened weapons inspectors whose presence was paid for by funds from the Program.¹²³

Under the Program, the oil was transported into Turkey, where it was delivered to those countries that had contracts with Iraq.¹²⁴ While Iraq could choose, to some extent, which countries to bargain with, the contracts still had to be approved by the U.N. The revenue gained from these transactions was placed in an escrow account and used to purchase necessities, which were also subject to U.N. scrutiny.¹²⁵

Prior to the instatement of sanctions against Iraq, the large international oil companies had lost much of their ability to manipulate oil producing nations as a result of nationalization in the 1950's and OPEC's rise to power in the 1970's and 1980's.¹²⁶ Through the Oil-for-Food Program, the international community has regained some semblance of control, due to their ability to monitor the export of oil from Iraq and the import of goods into the country.

In addition, the imposition of sanctions can be seen as "punishment" for Iraq's earlier attempts to gain control of its oil fields. The sanctions also acted as a warning to other Middle Eastern countries to appease the oil companies, lest they be treated in a similar fashion. Stephen Pelletiere posits that the harsh response of the international community is a consequence of Iraq's attempts to free itself from the oil companies' power in the middle of the century.¹²⁷ Iraq was "sure to be punished by the oilmen; they could never forgive it for doing what it did. Baghdad had not only taken something that the oilmen believed was theirs by right" but had also turned to Communist countries to get aid.¹²⁸ Pelletiere continues, "Iraq's coup of nationalizing the IPC fields became a factor later on in precipitating the confrontation with the United States."¹²⁹

Although the policy of isolation and control has been in place for over ten years, it came into disfavor with much of the world community because of the humanitarian tragedy playing out in Iraq. A policy that isolates the country from the world at large by cutting the citizens off from new modes of thinking, the latest technical material, and a global network, is dangerous.¹³⁰ The sanctions, and the U.N.'s

¹²³ See Montgomery, *supra* note 49.

¹²⁴ *Id.* at 509.

¹²⁵ *Id.*

¹²⁶ See Section II, *supra*.

¹²⁷ PELLETIERE, *supra* note 1, at 142.

¹²⁸ *Id.*

¹²⁹ *Id.* at 143.

¹³⁰ Denis J. Halliday, *The Impact of the U.N. Sanctions on the People of Iraq*, J. PALESTINE STUD., Winter 1999, at 29 (1999). Halliday served as the Assistant Sec-

patronizing attempts to take care of the Iraqi people through the Oil-for-Food Program, foster feelings of humiliation and anger, which are not conducive to international peace. Further, "without the benefits of overseas travel and exposure to foreign information and ideas, the next generation of Iraqis, including the next generation of leadership, may become isolationist, introverted, and defensive."¹³¹

The Oil-for-Food Program allowed other countries to maintain control of Iraqi oil and the sanctions regime served the goal of retribution. These objectives are no longer desirable, if they ever were. Iraqis are stifled and starved at the expense of the large oil companies' sense of security. While this may have been tolerable under the system of concessions, the international community has made clear that it is no longer acceptable.

C. *Post-conflict. What Does the Future Hold for Iraq?*

The U.N. Security Council's Resolution 1483 announced the end of the Oil-for-Food Program and the transfer of the vestiges of the Program to the Coalition Provisional Authority. In light of the past conflict, which resulted from controlling Iraq's oil supply, the United States, Great Britain, and any other countries taking responsibility for rebuilding Iraq should tread carefully.

Until the development of a stable government, a program similar to that of Oil-for-Food should continue to operate.¹³² The United States and Great Britain need a similar program to provide food to the Iraqi population, to legitimate their presence, and to prevent other countries from acquiring Iraqi oil revenues through lawsuits.¹³³ The Program has many valuable food-distribution mechanisms, which could be used by the new government to distribute goods and food.¹³⁴ In addition, one of the most important reasons to keep a similar program is to avoid a financial nightmare: "[u]nder the U.N. program, the countries, companies, and individuals to which Saddam owes almost \$400 billion in debts, Gulf war compensation, and pending contracts—a list that includes Russia, Kuwait, and Saudi Arabia—are prevented from making claims on Iraq's oil revenues to recoup the money owed to them."¹³⁵

Although companies will be able to freely invest and purchase Iraqi oil, in all likelihood, that investment will be slow, and oil prices

retary-General of the U.N. until his resignation in 1998, and he served as the U.N. humanitarian coordinator of the Oil-for-Food Program for a year.

¹³¹ *Id.*

¹³² Judis, *supra* note 70, at 14.

¹³³ *Id.*

¹³⁴ *Id.* at 15.

¹³⁵ *Id.*

may be low, because of the perceived risk of instability in the country. Because the U.N. administered Oil-for-Food, it was relatively safe to enter into agreements with Iraq. This absence of risk, now gone, was worth a price premium.¹³⁶ In addition, although more countries are able to negotiate with Iraq for investment and production deals, they may hesitate to establish a presence in a country where the future is continually shifting. Therefore, it is imperative for the new government to stabilize immediately and project an image of assurance.

The people of Iraq and the international community call for a hastened timeline for the Coalition Provisional Authority's relinquishment of authority.¹³⁷ However, the Secretary-General reports that getting the assets and the contracts from the Oil-for-Food Program set in order and transferred to the authority will take some time.¹³⁸ Despite the international community's desire for speed, the Coalition Provisional Authority must verify that all exchanges are well-documented and that all the records are set in order.¹³⁹ A clear transition will ensure that the Iraqi people retain the benefits of the Oil-for-Food Program that they have not yet received, and that the Iraqi government, when it is formed, will have a firm foundation upon which to rest. Iraq, and the international community as a whole, have reached a crucial turning point. Should the authority turn Iraq over to the Iraqis, the oil companies may lose some of their influence. On the other hand, should the authority remain, or institute a sham government, they only continue the legacy of thinly-veiled "people control" that began at the turn of the century with international interest in oil.

¹³⁶ *Id.* (arguing that oil will sell at a lower value because of a perceived risk by the buyer, and there may actually be a difficulty in finding buyers for Iraqi oil that does not have the U.N. seal of approval).

¹³⁷ See *Secretary-General's July 2003 Report*, *supra* note 100, at 3-6 (reporting on the consensus of the Iraqi people to have a Iraqi-run government); *Security Council Briefing*, *supra* note 77 (detailing the various views of the Security Council members, many of whom desire for Iraq to be independent in the near future).

¹³⁸ *Secretary-General's July 2003 Report*, *supra* note 100, at 15-16.

¹³⁹ *Id.* at 15.