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Iraq and the United Nations
A Review of the Oil-for-Food Program

by

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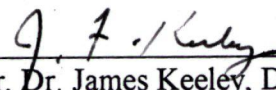
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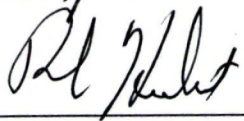
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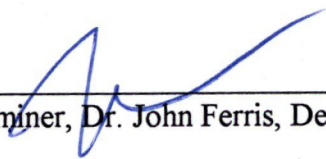
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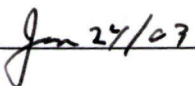
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Abstract

This work describes the development of the Oil-for-Food program from its initial creation in 1991 to its implementation in 1995 through the present day (December 2002). Beginning in 1998 the use of force against Iraq had become somewhat a daily routine and part of the daily news. Mounting popular and official protests and critiques by Non Governmental Organizations, United Nations member states, and high ranking United Nations civil servants against sanctions in general led to severe criticism and the questioning of sanctions as a tool to force compliance in International Relations. Sanctions, as a tool to force compliance and the OFF-program implemented as a mechanism to mitigate some of the negative humanitarian aspects of sanctions, are perceived to be ineffective and immoral. Moreover, non-transparency and non-availability of information on the exact process and the lack of studies on the OFF program has further strengthened criticism of procedures in place.

This thesis describes the overall process of the OFF-program and identifies main areas of weaknesses in the process and implementation of it. This study rests on official UN documentation, non-governmental documentation - publicly available, and on interviews held at UN headquarters in New York with staff of the Office of the Iraq Program and UNMOVIC in September 2002.

Within the next decade the UN organization is going to be faced with a major reform task. It is the hope of the author that this study could assist in the implementation of more effective mechanisms of humanitarian exemption programs with the primary objectives to improve the humanitarian situation of civilian populations, in the unfortunate situation of the implementation of sanctions against nation states.

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The completion of this work would not have been possible without the support of many individuals and organizations. I therefore like to use this opportunity to extend my gratitude and appreciation to the following: Many thanks to Dr. James Keeley for taking the time, effort, and patience to teach me how to research and think independently. Many thanks to Dr. Rob Huebert for starting me off on this great experience, giving me confidence, and supervising my honours thesis. Thank you to the Renert Centre for its support and commitment to excellence in education. For their time and input, thank you to the Markland Group and the United Nations Office of the Iraq Program.

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List of Abbreviations

DP	Distribution Plan
ESB (53/59 per cent)	Account for the central/southern Iraq
ESC (13 per cent)	Account for the three northern governorates
FAO	Food and Agricultural Organization of the United Nations
GAO	United States General Accounting Office
GOI	Government of Iraq
GOU	Geographical Observations Unit
GRL	Good Review List
ISC	The Security Council Committee Established by Resolution 661 (1990) Concerning the Situation Between Iraq and Kuwait (Iraqi sanctions committee)
IAEA	International Atomic Energy Agency
MDOU	Multidisciplinary Observation Unit
MIF	Multilateral Maritime Inspections Force
MOU	Memorandum of Understanding
NGOs	Non Governmental Organizations
OECD	Organization for Economic Co-Operation And Development
OCHA	Office for the Coordination of Humanitarian Affairs
OIP	Office of the Iraq Program
SOMO	State Oil Marketing Organization
UNCF	United Nations Compensation Fund
UNESCO	United Nations Educational, Scientific and Cultural Organization
IAHP	UN-Inter Agency Humanitarian Program
UNOHCI	United Nations Office of the Humanitarian Coordinator in Iraq
OFF	Oil-for-Food Program
UN	United Nations
UNICEF	United Nations Children's Fund
UNMOVIC	United Nations Monitoring, Verification and Inspection Commission
UNSCOM	United Nations Special Commission
WFP	World Food Program
WHO	World Health Organization

Chapter I: Introduction

In an environment in which acts of aggression, threats, and breaches to peace remain part of the global reality, nations continue to require a repertoire of coercive measures that allow for non-military and military responses. Only limited coercive measures are available that can be used by nations as strategic tools in times of need. Sanctions remain part of a coercive list of strategic tools that can be used to show immediate condemnation of the act, shock an economy, establish the groundwork for the use of force, freeze assets, restrict the freedom of movement of government and groups or individuals, and implement arms embargoes.

The increased use of general or comprehensive sanctions in the 1990s led to the growing awareness of the harsh impact of sanctions on civilian populations. The perceived ineffectiveness of sanctions to force compliance with international norms led to mounting criticism of their use. The specific experiences in the case of Iraq spurred criticism against the use of general or comprehensive sanctions as a coercive tool in international relations.

In response to Iraq's invasion of Kuwait in August 1990, the United Nations Security Council imposed comprehensive economic, financial and trade sanctions on the aggressor. The comprehensive sanctions regime implemented against Iraq was part of a strategy to shock the Iraqi economy, to establish the case for the use of force, if necessary, and to arrange the groundwork for long-term objectives such as to obtain assets and to disarm Iraq.¹

¹ John Stremlau, *Sharpening International Sanctions: Toward a Stronger Role for the United Nations*, A Report to the Carnegie Commission on Preventing Deadly Conflict, (Carnegie Corporation of NY: November, 1996). p.2.

The ceasefire agreement signed in April 1991, after the Gulf War, did not prompt the Security Council to discontinue the sanctions regime. The sanctions regime is continuing with the particular objective of forcing Iraq's compliance with a series of military and security obligations under the terms of the disarmament provisions of the cease-fire resolution, Security Council Resolution 687.² In practical terms, the discontinuation of the sanctions regime was linked to Iraq's compliance with these provisions. According to official reports, the sanctions regime continues until the present date "...because the Iraqi government has failed to satisfy the conditions, in particular the requirement to declare and destroy weapons of mass destruction and to accept weapons inspections by UN experts on its territory."³

The prolonged use of comprehensive sanctions against Iraq led to fundamental questions regarding this coercive tool. The overall effectiveness of sanctions as a productive diplomatic tool to force compliance with international norms and to achieve international political objectives either as an alternative to or in conjunction with military force has been questioned.⁴ Assessments of the effectiveness of sanctions in Iraq and in other cases led to some general conclusions. Most sanction regimes have been controversial. Chapter VII, article 41 of the UN Charter authorizes the UN Security Council to call upon member states to apply non-military measures in order to achieve

² United Nations, *Security Council Resolution 687* (3 April 1991), S/RES/687, states: "the destruction, removal and rendering harmless of weapons of mass destruction," para.13.

³ Rapporteur: Baroness Nicholson of Winterbourne, Committee on Foreign Affairs, Human Rights, Common Security and Defense Policy, *Report on the Situation of Iraq Eleven Years after the Gulf War*, (2000/2329)(INI), A5-0157/2002, (26 April 2002).

⁴ David Cortright and George A. Lopez, *The Sanctions Decade: Assessing UN Strategies in the 1990s*, (Lynn Rienner: 2000.); Gary Clyde Hufbauer and Jeffrey J. Scott, assisted by Kimberly Ann Elliot, *Economic Sanctions Reconsidered: History and Current Policy*, 2nd ed., 2 vols. (Washington, D.C.: Institute for International Economics (IIE), 1990); Cortright and Lopez, *Economic Sanctions: Panacea or Peace building in a Post-Cold War World*. (Boulder Colo.: Westview Press, 1995); Margaret P. Doxey, *International Sanctions in Contemporary Perspective*, (NY: St. Martin's Press, 1987).

international peace and security.⁵ Multilateral and mandatory sanction regimes are implemented and decisions regarding sanction regimes are made by the UN Security Council. The political nature of the Security Council, however, leads to the argument that the Council as a legislative instrument is of poor quality. As Paul Conlon explains, "there is a unanimity that the Council is a political body...it is not held to be a judicial body."⁶ Decisions reached by the Security Council, however, are considered to be law.

Sanctions resolutions are considered legislative instruments, sources of law, which in some jurisdictions automatically trigger executory acts as soon as they are adopted. In this case they are themselves law.⁷

The need for clear 'international sanctions laws' as a guideline for the use and implementation of sanctions is therefore evident.⁸

Moreover, as an organization advocating human rights, the UN finds itself under attack for developing and enforcing structures, such as sanction regimes, that have a damaging impact on civilian populations.⁹

In an effort to deal with this critique, to strengthen the use of sanctions by the United Nations Security Council and to make sanctions a more viable and effective tool of coercion, the concepts of 'smart sanctions' and 'financial targeted sanctions' gained popularity among academics and practitioners. The concepts, their definition and utility were debated and explored in a series of conferences.¹⁰ In general, smart sanctions can

⁵ United Nation, *UN Charter*, Chapter VII, Article 41.

⁶ Paul Conlon, "Legal Problems at the Centre of United Nations Sanctions," *Nordic Journal of International Law* 65, (1996). p.75. (see endnote: 73-90)

⁷ Ibid.

⁸ For a discussion see all articles in *European Journal of International Law*, Volume 13, (2002).

⁹ Thomas G Weiss, David Cortright, George A. Lopez and Larry Minear, eds. *Political Gain and Civilian Pain; Humanitarian Impacts of Economic Sanctions*, (Lanham, Md.: Rowman & Littlefield: 1997).3; Dennis Halliday, "Why I Resigned My UN Post in Protest of Sanctions," Presented on November 5, 1998 at Harvard University in Cambridge, Massachusetts.

¹⁰ Interlaken I, Expert Seminar on Targeting UN Financial Sanctions, March 17-19, 1998, <<http://www.smartsanctions.ch/interlaken1.htm>>; Interlaken II, 2nd Expert Seminar on Targeting UN Financial Sanctions, March 29-31, 1999, <<http://www.smartsanctions.ch/interlaken2.htm>>; Bonn-Berlin Process, First and

include financially targeted sanctions and restrictions on the freedom of movement of a government, individuals, elite and organizations that are deemed to be threats to international peace and security. Financially targeted sanctions can include the freezing of assets of governments, individuals, and companies.¹¹ Targeted sanctions try to put pressure, mainly of financial nature, directly on governments and the elite while minimizing negative effects on civilian populations.¹² The concept of targeted sanctions has been extended to include the overall sharpening of the sanctions system to enhance control of financial resources and tighten prohibitions against weapons and dual use imports and limit the freedom of movement.¹³

The concept of targeted sanctions stands in contrast to the concept of comprehensive or general sanctions, which include complete trade sanctions on all items entering the targeted country, as they have been implemented in the case of Iraq. According to the Stockholm Process,

The key feature of targeted sanctions is the limited scope of the sanctions and their focus on specific actors, i.e. targeted Governments and/or ruling elite, non-state actors, entities and individuals. Targeted sanctions include financial sanctions, asset freezes, arms embargoes, aviation sanctions, travel bans, diplomatic sanctions and restrictions on trade in specific natural resources and commodities (e.g. diamonds, oil). Key differences from comprehensive sanctions such as those imposed on Iraq include the overriding issue of minimizing the impact of sanctions on the civilian population. At the same time, targeted sanctions require greater attention to monitoring whether or not

Second Expert Seminar in 1999 and 2000, 'Design and Implementation of Arms Embargoes and Travel- Aviation-related sanctions', <<http://www.smartsanctions.de/>>; the Stockholm Process, 'Strengthening the Implementation and Monitoring of Targeted Sanctions', April-September 2002, <<http://www.smartsanctions.se/reports/The%20Stockholm%20Process.htm>>.

¹¹ Interlaken I, Expert Seminar on Targeting UN Financial Sanctions, March 17-19, 1998, <<http://www.smartsanctions.ch/interlaken1.htm>>; Interlaken II, 2nd Expert Seminar on Targeting UN Financial Sanctions, March 29-31, 1999, <<http://www.smartsanctions.ch/interlaken2.htm>>

¹² "Can Sanctions be Smarter?", ODI Conference, 16-17, December 1998, London. <<http://www.smartsanctions.ch/conferences.htm>>.

CASI, Guide to Sanctions, "Will Smart Sanctions alleviate Humanitarian Sanctions?" available at: <<http://www.cam.ac.uk/societies/casi/guide/smartsanctions.html>>.

¹³ David Cortright, George Lopez and Alistair Miller. "Smart sanctions...." Executive Summary, Introduction,

sanctions are modifying the behaviour of targets in a desirable direction.¹⁴

The general sanctions debate has, however, put only limited emphasis on the importance of humanitarian exemption programs. Humanitarian exemption programs are structures built into the sanctions regimes themselves. These structures are implemented with the specific objective of mitigating some of the negative effects of sanctions on the civilian population, while operating within the framework of sanctions. According to Cortright and Lopez,

the desire to avoid humanitarian suffering among vulnerable and innocent populations has become a dominant feature of Security Council policymaking...the concerns of humanitarian consequences has been the principle factor motivating the trend toward the use of more targeted and selective sanctions.¹⁵

While a number of important steps have been taken by the Security Council, since the Iraqi case, to prioritize humanitarian concerns and "humanitarian assessments and impact missions have now become a regular feature of UN sanctions"¹⁶, the reform work of the United Nations in this regard is far from complete. Innovations implemented have included easing the impact of sanctions on a civilian population by targeting sanctions more narrowly on elite, government, and groups. Since 1994 the Security Council has implemented no general sanctions.¹⁷ Retaining the basic sanctions structure, implementing some changes to it inform of resolution 1284 (1999) and resolution 1409 (2002).

¹⁴ Stockholm Process, "Working group 3: Discussion paper from the First Plenary Meeting, Gimo, Sweden, April 3-5, 2002," <http://www.smartsanctions.se/reports/wg3_rep2.htm>

¹⁵ Cortright and Lopez, *Sanctions and the Search for Security: Challenges to UN Action*, (Lynn Rienner: Boulder London,) p. 208.

¹⁶ Ibid.

¹⁷ Ibid., p.212.

However, only limited studies¹⁸ focus exclusively on the improvement of the mechanism of humanitarian exemption programs. The humanitarian consequences of sanctions in the specific case of Iraq have eroded support for sanctions in this case. Since the implementation of the OFF program in 1995, more than \$51 billion in oil revenues have been channeled into the UN account¹⁹ making the 'Oil for Food' program (hereinafter the OFF program) the largest humanitarian exemption program ever implemented by the United Nations. Initial warnings and reports of the emergence of a humanitarian crisis, caused by the consequences of the Gulf War²⁰ and the influences of the sanctions²¹ led to the development of a humanitarian exemption program in the case of Iraq. The humanitarian exemption program was first introduced by resolutions 706 and 712 (August/September 1991). The objective of this program was to authorize the partial lifting of the oil embargo, to allow Iraq to sell its oil in exchange for revenue so that it would be able to purchase items for the relief of its civilian population. Generated revenue was to be subject to control by the UN and deposited into an UN-controlled and supervised account. Under the terms of resolutions 706/712, the UN was not only able to control the revenue generated by the sale of Iraqi oil, but could also control all items purchased by Iraq. The Government of Iraq rejected this scheme initially, assuming that

¹⁸ Examples of works focusing on mechanism of the Oil for Food program include, Douglas Scott, "The Practical effect of the Iraqi OFF Program," *Disarmament Diplomacy* (Issue No 25, April 1998,) also available at: <www.fas.org/news/iraq/1998/04/980400_ds.htm>. Scott, "In Iraq, Sanctions Work", article appeared originally in the National Post on January 19, 1999. Also available at: <www.hwc.org/link/mkg/sanctions-work.html>. Gerard McHugh, "Improving the Humanitarian Situation in Iraq: 'oil-for-food' post Resolution 1284 (1999)," (4 September 2000), and "Oil-for-Food' as a Catalyst for a Strategic Approach to Improving the Humanitarian Situation in Iraq" (7 July 1999), available at CASI web-site; 13 NGOs in association with save the Children UK, "Iraq Sanctions; Humanitarian Implications and Options for the Future", Chapter 5. August 6, 2002.

¹⁹ United Nations, OIP - Basic Figures, <www.un.org/Depts/oip/basicfigures/html>. (09/02)

²⁰ Gulf War: August 6, 1990 - February 28, 1991. Phyllis Bennis and Denis J. Halliday: Interviewed by David Barsamian, "Iraq: the Impact of Sanctions and US Policy," In *Iraq under Siege*, Chapter II.

²¹ United Nations, *Report by the Under Secretary General Martti Ahtisaari*, S/22366, 20 March 1991, available at United Nations Office of the Iraq Program: Oil-for-Food, Implementation of Oil-for-Food: A Chronology.

sanctions would be implemented only temporarily. Eventually, the program was adopted fully in 1995 and became known as the Oil-for-Food program.

The OFF program finds meaning only in the existence of the sanctions for which it is supposed to provide some measure of relief, yet which presumably it is not intended to undermine. Envisioned originally as a temporary measure to halt the developing humanitarian crisis in Iraq, the OFF program has continued its operations until the present day and has entered its twelfth phase of operation. In these years the OFF program has undergone major changes, in both its level of funding and its scope, but according to the United Nations Secretary General not in its objective. The objective of the program has remained limited. According to the UN Secretary General the humanitarian program was never intended to be a substitute for normal economic activity. Initially the OFF program was implemented to fund mainly the purchase of food and medicine. Presently it is involved in the import of goods that correspond to 24 sectors of the economy and include food, medicine health, sanitation, electricity, agriculture, oil industry rehabilitation, and telecommunications. This however, leads to the question "what exactly is the objective of a humanitarian program that was supposed to be temporary, but has now entered its seventh year of implementation in a country targeted by comprehensive sanctions?"

Despite the fact that the OFF has been in operation for more than seven years, only limited research, reliable data and analysis have been developed on it. Douglas Scott noted in 1998, "not only has there been no explanatory material published, the UN has been strangely reluctant to divulge information about the Oil-for-Food program."²²

²² Scott, "The Practical Effect of the Iraqi Oil-for-Food Program." *Disarmament Diplomacy - Issue No 25*. <www.acronym.org.uk/25iraq.htm>.

Key questions about the OFF program have remained unanswered: How does the OFF program work in general terms? Who are the main actors involved in its implementation? What are their responsibilities and roles? What are some of the main problems that have developed in the implementation of the OFF program?

The objective of this thesis is to answer some of these questions. The specific objectives of this research are threefold. The first is to compile a body of information especially on the process of the OFF program, which is missing in the present literature. The second is to enhance understanding of the complex nature of the OFF program while highlighting some limitations and weaknesses in its procedures and implementation. The third is to identify specific problem areas in the process of the OFF mechanism, to explain how these areas work and why (if so) these problems have persisted. A final analysis will look at conclusions that can be reached about the workings of the OFF program in the case of Iraq. Recommendations are offered, based on the Iraqi experience, to make the implementation of humanitarian programs in possible future cases more efficient.

This research approaches the process of the OFF program in terms of stages. The roles and responsibilities of the main actors involved in the OFF program are explained. Five main stages of the OFF program are identified. Problems specific to each stage are analyzed. This section has noted the broad background of the OFF program and has outlined the objectives of this study. The next chapter introduces the primary actors involved in the OFF program. In addition, it explains the necessary background information of the program and offers a brief chronology of its development. Chapter three lays the groundwork for a more detailed examination, describing the general

functioning of the OFF system. Chapter four begins to identify various influences that lead to certain problems. These include the decline in total revenue available for the implementation of the OFF and flaws and inefficiencies in the overall design of the program. Chapter five outlines consequences of these problems in the various stages of the OFF program and offers an analysis of these across stages, on sectors and across sectors. Chapter six reaches a conclusion on the implementation of the OFF.

Chapter II: The Main Actors and the Background to the Oil-for-Food Program

The first part of this chapter identifies briefly the main actors and their roles and responsibilities in the implementation of the OFF program, while touching on some of the possible political motivations of these actors only insofar that they directly influence the implementation of the OFF program. The second part develops an overview and highlights the evolution of the sanctions regime and the OFF program in broad terms, from the introduction of sanctions in 1990 until the present day.

A. United Nations Departments under the Authority of the Security Council

1. The Security Council Committee Established by Resolution 661 (1990) Concerning the Situation Between Iraq and Kuwait (Iraqi sanctions committee (ISC))

In accordance with the United Nations Charter and the Provisional Rules of Procedures of the Security Council, the Council has the authority to establish subsidiary organs for the performance of its functions.²³ To administer the sanctions imposed, the Security Council creates sanctions committees, which are considered such subsidiary organs.²⁴ The authority of these sanction committees is limited. It remains the exclusive authority of the Security Council to ease or strengthen the sanctions imposed.²⁵ Moreover, the execution of sanctions remains the responsibility of each individual member state. Sanction committees do not have the authority or the power to enforce sanctions.²⁶

At any given time the Security Council and sanctions committees have the same membership. Each separate sanctions committee for each sanctions regime is composed

²³ United Nations, *The Charter of the United Nations, Article 28*, <http://www.un.org/aboutun/charter/index.html> and the Security Council, *The Provisional rules of Procedures, Rule 28*, <http://www.un.org/Docs/sc/scrules.htm>.

²⁴ Paul Conlon, *United Nations Sanctions Management: A Case Study of the Iraqi sanctions committee, 1990-1994*, p.8

²⁵ H.P Kaul, "Die Sanktionsausschüsse des Sicherheitsrates: Ein Einblick In Arbeitsweise und Verfahren," United Nations, Vol. 44. (1996), p. 97.

of the fifteen Security Council members. According to a report published by the United Nations Office for Humanitarian Affairs, the delegates on sanctions committees are serviced by the Department of Political Affairs Sanctions Branch.²⁷ Moreover,

Each committee has its own terms of reference, its own leadership and staff, and its own procedures regarding exemption review and public disclosure. Each of the fifteen members states of the council serve on each sanctions committee, in some cases represented by the same official, in other cases not. There is considerable unevenness in the backgrounds and expertise of the officials involved and in the seriousness with which they approach their responsibilities. No common training is provided.²⁸

The lack of the development and identification of consistent procedures and policies for sanctions committees has been identified as negatively influencing the working mechanism of some sanctions committees.²⁹

In the case of Iraq, representatives of the fifteen members of the Security Council act as delegates on the Iraqi sanctions committee, generally under the presidency of a non-permanent member of the Security Council.³⁰ The Iraqi sanctions committee decided that delegates elect a bureau at the beginning of each calendar year. This bureau consists of a chairman and two vice-chairmen. Decisions on the Committee are reached by consensus.

According to Conlon's study on the management of sanctions and the workings of the Iraqi sanctions committee from 1991-1994, before the implementation of the OFF program, decisions reached on the Iraqi sanctions committee, or any other sanctions committee, are affected by structural influences. In contrast to the non-permanent

²⁶ Kaul, "Die Sanktionsausschüsse des Sicherheitsrates," p. 97.

²⁷ Minear, Cortright, Wagler, Lopez and Weiss, Report for the United Nations Office for the Coordination of Humanitarian Affairs, *Toward More Humane and Effective Sanctions Management, Enhancing the Capacity of the United Nations System*, Chapter III, p. 2. See asterix notes.

²⁸ Ibid.

²⁹ Report for the United Nations Office for the Coordination of Humanitarian Affairs - OCHA-Online, *Enhancing the Capacity of the United Nations System*, Chapter III, p. 3.

member staff, the delegates of the permanent five members of the Security Council sit permanently on sanction committees. A two-year time limitation is placed on the non-permanent member staff of sanctions committees, which according to Conlon, restricts the development of long-term experienced staff representing the non-permanent members of the Security Council on sanctions committees. This inequality leads in practical terms, to a qualitative superiority of staff engaged by the permanent five members of the Security Council on sanctions committees. Conlon notes

the P-5 have larger and more specialized staffs, they have continuous experience in participating in the work of the Council and the committees, and they have archives of restricted documents, allowing their delegates to draw upon institutional memory to their advantage...It is their permanence rather than their veto or class solidarity, that allows the P-5 to exercise so much power over the Council and its committees.³¹

Moreover, according to Conlon, the staff of sanctions committees is usually career diplomats who, when assigned to their permanent mission in New York, become delegates to a sanctions committee. He explains that career diplomats are often 'generalists' who can be moved around between widely divergent functions. To him, the nature of the work performed on sanctions committees stands in contrast to the nature of work that career diplomats are accustomed to. He states,

...most diplomacy is time sensitive and consists of short but intensive interaction, whereas the type of legal or administrative work that the committees perform require slow but persistent and thorough scrutiny and collegial discussion.³²

The nature of the staffing on each sanction committee can, therefore, lead to inefficiencies.

³⁰ United Nations, *Security Council, Resolution 700*, (S/1996/700), 26 August 1996, para. 3 & 4, available at: <<http://www.un.org/Docs/sc/committees/IraqKuwait/700e.pdf>>.

³¹ Conlon, *United Nations Sanctions Management*, p.18.

³² Ibid.

According to the UN the main responsibility of the Iraqi sanctions committee is to oversee all exemptions to the sanctions implemented in the case of Iraq.³³ Exempt items are either of commercial or of humanitarian nature. These items are brought to Iraq either by humanitarian organizations or through established commercial channels with commercial items representing the vast majority of all contracts imported.³⁴

The scheme that was developed to allow for two main areas of exemptions to the sanctions in Iraq is the Oil-for-Food program. The Oil-for-Food program allows for the export and sale of Iraqi oil and the procurement of items and goods in exchange for the revenue generated by these sales. The overall organization of transport, shipment of items and goods into Iraq is also the responsibility of the Iraqi sanctions committee.³⁵

In its first capacity, the Iraqi sanctions committee is responsible for approving the oil-pricing formula for Iraqi oil under the Oil-for-Food Program. The pricing formula for oil is of primary importance for Iraq's ability to purchase goods, as without an approved formula, Iraq is left without ratified crude prices. In the absence of ratified crude oil prices Iraq is unable to export and sell oil in exchange for revenue. Any adjustment or delay in the approval of the pricing formula can lead to administrative delays influencing the entire process of the program.

In its second capacity, the committee is responsible for making decisions on all applications received from companies, through their states' permanent missions, for the export of items and goods to Iraq.

The strong influence of the P5 staff on decisions made by the Iraqi sanctions committee on applications has had far reaching consequences for the practical

³³ United Nations, "Press Release," SC/6452, (4 December 1997).

implementation of the Oil-for-Food program. In theory, any of the 15 members of the Iraqi sanctions committee have the authority to approve, block, or reject applications or to put applications on hold. Blocked applications cannot be resubmitted. The approval of applications placed on hold is delayed for a stated reason. Various reports suggest that most applications were blocked or placed on hold by the delegates of the P5 nations. In addition the large number of applications placed on hold by the delegates of the United States and Great Britain led to the argument that the process of contract approval was 'hijacked' by political influences.

These political influences are identified as "commercial interests and oil politics."³⁶ As a recent report states, commercial interests of various actors including those of the members of the Security Council and shape policies on Iraq sanctions:

...France, Russia, China (permanent members of the Security Council) also have very substantial interests in commercial relations with Iraq....Commercial interest incline these states to support Iraq and to favor more lenient approach to sanctions policies, though continued sanctions may offer some of them rich rewards in smuggling and 'political' contracts that they could not win on an open market...Considering that the US and the UK act almost alone as sanctions advocates and enforcers, and that they are the headquarters of the world's four largest oil companies, we cannot ignore the possible relationship of sanctions policy with this powerful corporate interest.³⁷

According to Anthony Arrove, the political interest of the US and the UK, however, go beyond just the price of oil and gas. Arrove states,

While some have attempted to explain US policy in Iraq by pointing to the price of gas at American pumps, the picture is more complicated. The leading supplier of oil to the United States is actually Canada, which only recently displaced Venezuela from the top position. The US interest in Middle Eastern oil goes deeper. In addition to being so profitable, US planners have long understood that

³⁴ Report for the United Nations Office for the Coordination of Humanitarian Affairs - OCHA-Online, *Enhancing the Capacity of the United Nations System*, Chapter III, p. 3.

³⁵ United Nations, *Memorandum of Understanding*, Section IV para. 17.

³⁶ 13 NGOs in association with Save the Children UK, "Iraq Sanctions: Humanitarian Implications and Options For the Future," August 6, 2002. <http://www.globalpolicy.org/security/sanctions/iraq1/2002/paper.htm>. p.19/58.

³⁷ Ibid. p.19-20.

Middle Eastern oil is of unparalleled geostrategic importance...In particular, the government recognized that control over the region's oil would give it strategic leverage over competing capitalist states, especially Japan and Germany.³⁸

According to an analysis on US political objectives in Iraq by Daniel Byman, US objectives in the case of Iraq include three main points:

...preventing any Iraqi regional aggression; stopping Iraq's nuclear, biological, and chemical and missile programs; and removing Saddam from power. A negative objective--preventing the spread of regional instability--has also guided U.S. actions. The relative priority of these goals shifted as the decade wore on, with concerns about Iraq's WMD programs and an emphasis on changing the regime in Baghdad rising in importance relative to the goals of containing Iraq and preserving regional stability.³⁹

According to the website *Uncover*, a censored and uncensored version of an official UN document shows that the US and Britain, are responsible for 98% of all holds placed on goods.⁴⁰ It is reasonable to argue that political interest could be translated into the number of applications that have been placed on hold by Iraqi sanctions committee members. As of 15 February 2002, there were 2,089 applications on hold, with a total value of \$5.32 billion.⁴¹

2. The UN Special Commission (UNSCOM), the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) and the International Atomic Energy Agency (IAEA)

The UN Special Commission (UNSCOM) was established by resolution 687 of 3 April 1991 as part of the formal cease-fire between Iraq and the coalition of Member

³⁸ Anthony Arnove, "Iraq under Siege: Ten Years and on," *Monthly Review* December 2000, Volume 52, Number 7, <http://www.monthlyreview.org/1200arnov.htm> (Jan.03)

³⁹ Daniel Byman, "After the Storm US policy toward Iraq since 1991," *Political Science Quarterly*, Volume 115, Number 4, Winter 2000-2001, pp. 493-516.

⁴⁰ Uncovered, "The American Media and its Reporting on Iraq." Website has a censored and uncensored version of a UN document that shows the holds placed on items by member states arguing that 98% of all holds are placed by the United States and the United Kingdom. <<http://home.attbi.com/~dhamre/docUNXLS.htm>>. Published in 2001.

States of the Gulf War. UNSCOM was a subsidiary organ of the Security Council, taking direction from and reporting to the Security Council. UNSCOM had two main objectives and functions: the elimination, under international supervision, of Iraq's weapons of mass destruction (chemical and biological weapons) and ballistic missiles with a more than 150 kilometers (km) range; and the implementation of measures to ensure that the acquisition and production of prohibited items was not resumed by Iraq at any point, to ensure compliance.⁴² UNSCOM's monitoring objective included ensuring that Iraq does not rebuild its capabilities once it was certified that they had been destroyed.⁴³ UNSCOM was assisted by the International Atomic Energy Agency Team (IAEA), which is responsible for the nuclear sector.

In order to ensure the implementation of UNSCOM's objectives, particular attention was paid to all dual-use items to ensure that such materials and facilities were not put to use in prohibited military activities. UNSCOM established an export/import mechanism with the main objective of monitoring the sales to Iraq of dual-use items that might have military applications.⁴⁴ All states interested in providing Iraq with dual-use items were obliged by Security Council Resolution 1051 (27 March 1996) to notify such exports. Resolution 1051 adopted "a mechanism of notification by both Iraq and the exporting country of dual-use items to be supplied to Iraq."⁴⁵ Moreover, it adopted a goods list of prohibited items and materials that was circulated to states for their reference. The system was based on the one hand on Iraq's willingness to inform the

⁴¹ United Nations, *Statement by Benon V. Sevan, Executive Director of the Iraq Program at the Informal Consultation of the Security Council Consultation of the Security Council*, New York, Tuesday, 26 February 2002.

⁴² United Nations, *Security Council, Resolution 687*, 3 April 1991, para.c.

⁴³ Stockholm International Peace Research Institute - Fact Sheet, "Iraq: the UNSCOM Experiences," October 1998, The Unscm Regime, p.4/23.

⁴⁴ United Nations, *Security Council, Resolution 715* (1991), S/RES/0715, New York, 11 October 1991 para.7.

⁴⁵ UNSCOM, Home Page, <<http://www.un.org/Depts/unmovic/index.htm>>. (accessed 08/02)

appropriate UN departments of its intention to import and on the arrival of dual-use items in Iraq. On the other hand it was assumed that the exporting country would also notify the UN of contracts to export such items. All sales of dual-use items were also notified to the IAEA. Furthermore, items were subject to inspection upon arrival in Iraq and at the site of end use.

Under the system, monitoring groups would then inspect the imported items at the site of end use to assess their purpose, to tag and inventory them as necessary, and to incorporate the items into the monitoring plan for that site to ensure they are not used in prohibited weapons programs.⁴⁶

After mounting controversies over the release of information to national governments by UNSCOM's staff, mainly officials from national governments, UNSCOM was replaced with UNMOVIC, which is mainly staffed by the United Nations. The nature of inspections changed with the withdrawal of UNSCOM staff from Iraq and the replacement of them by UNMOVIC staff. UNSCOM inspectors had access to intelligence information that UNMOVIC personnel do not have.⁴⁷

The relationship of UNSCOM/UNMOVIC and the IAEA to the OFF program is based on the technical expertise of its staff. UNSCOM/UNMOVIC and IAEA review and offer technical support only on contracts that are imported under Security Council Resolution 986, which created the OFF program. UNMOVIC now analyses incoming contracts against the Goods Review List established under Security Council Resolution 1409.

UNSCOM/UNMOVIC and IAEA staff, however, do not review contracts for items that are submitted outside of the OFF program as established under resolution 986 (1995). Some applications for items are submitted under resolution 661 (1991) and 687

⁴⁶ UNSCOM, Home Page.

(1991) before the implementation of the OFF. Resolution 661 (6 August 1991) excluded from the comprehensive sanctions regime supplies "intended strictly for medical and purposes, and, in humanitarian circumstances, food stuffs...."⁴⁸ According to Security Council Resolution 666 (1991),

foodstuffs should be provided through the United Nations in co-operation with the International Committee of the Red Cross or other appropriate humanitarian agencies and distributed by them or under their supervision in order to ensure that they reach the intended beneficiaries...[and] recommends that medical supplies should be exported under the strict supervision of the Government of the exporting State or by appropriate humanitarian agencies.⁴⁹

The cease fire resolution 687 (1991), passed after the end of the Gulf War, decided to exclude from the comprehensive trade embargo medicine, health supplies, foodstuffs and any financial transactions related to the export of these items.⁵⁰ It also directed the Iraq sanctions committee to process these applications under "simplified and accelerated 'no-objection' procedures, to materials and supplies for essential civilian needs as identified in the report to the Secretary General dated 20 March 1991."⁵¹ Moreover, according to the OIP, applications that are received under resolution 661 for export of goods to Iraq, do not receive payment from the UN Iraq account, but receive payment under other arrangements. Furthermore, these applications "can include gifts, donations, samples for trade fairs, etc....Revised procedures under resolution 1409 (2002) do not apply to 661 applications."⁵²

⁴⁷ Gary Milhollin and Kelly Motz, "Why Iraq Will Defeat Arms Inspectors," *The New York Times*, September 16, 2002, p. A21.

⁴⁸ United Nations, Security Council, *Security Council Resolution 661 (1991)*, S/RES/661, 6 August 1991, para. 3(a)

⁴⁹ United Nations, Security Council, *Security Council Resolution 666 (1990)*, S/RES/0666, 13 September 1990, para. 6 and 8.

⁵⁰ United Nations, Security Council, *Security Council Resolution 687 (1991)*, S/RES/687, 3 April 1991, section F, para. 20.

⁵¹ Ibid.

⁵² United Nations, Office of the Iraq program, *Glossary*, Website, New York, accessed December 2002

Items entering Iraq under resolutions 661 and 687 were and are presently not reviewed by UNSCOM/UNMOVIC and IAEA. They are instead forwarded directly to the Iraqi sanctions committee. Tim Niblock explains that under the Committee's no objection procedures, it remains, however, essential that no sanctions committee member would object to an Iraqi request for the import of a specific item.⁵³ According to Conlon, the no objection procedures authorized the Iraqi sanctions committee to allow the export of items, or to decline it without explanation.⁵⁴

It is somewhat surprising that the Secretary General report of November 2002 states that it is especially these applications that "would appear to have resulted in a considerable amount of unnecessary holds or blocks, which are rarely removed subsequently."⁵⁵ Description of items placed on hold for applications entering under resolution 661 and 687 are, however, not readily available. In practical terms it is therefore possible that foodstuffs and medicine are placed on hold even though they are supposed to be excluded from the embargo under resolution 687. At the same time it is possible that items placed on hold under these procedures are not defined as foodstuff or medicines in the traditional sense.

Ambassador Rolf Ekéus (Sweden) was appointed as the Executive Chairman of the Special Commission. Richard Butler (Australia) replaced Ekéus as the Executive Chairman on 1 July 1997. After Butler's two-year term ended in 1999, a successor was not appointed. The Deputy Executive Chairman, Charles Duelfer (United States), was officer-in-charge from 1 July 1999, to 17 December 1999. UNSCOM was replaced by the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC),

⁵³ Tim Niblock, *Pariah States & Sanctions in the Middle East*, Boulder London: Lynn Rienner Publisher, p. 100.

⁵⁴ Conlon, *Sanctions Management*, p. 64.

which was created, through the adoption of Security Council resolution 1284 on 17 December 1999.⁵⁶

B. United Nations Departments under the Authority of the Secretariat

The humanitarian components of the OFF program are under the overall responsibility of the UN Secretariat. It is reasonable to assume that the implementation of the OFF under the authority Secretariat was an important step to strengthen the role of the UN Secretariat in the implementation of humanitarian exemption programs. The OFF program was the first experience of the UN Secretariat with a program that was not a traditional aid program. The Office of the Iraq program (OIP), the Office for the Coordination of Humanitarian Affairs (OCHA), and the Office of the United Nations Humanitarian Coordinator in Iraq are departments that are in communication and work together.

1. The United Nations Office of the Iraq Program (OIP)

The Secretary General established the Office of the Iraq Program in October 1997 to consolidate the management of United Nations Secretariat activities related to the implementation of the Oil-for-Food program. The OIP was handled initially by a 'special unit' within the UN Secretariat and comprises one of many programs and departments of the UN Secretariat.⁵⁷ The staff of the OIP assists the decision-making delegates on the Iraqi sanctions committee. Conlon explains

...with one third of the Security's Council's membership changing every year...delegates are constantly coming and going. UN Secretariat officials,

⁵⁵ United Nations, *Secretary General Report*, S/2002/1239, 180 day report, Phase XII, New York, November 2002, para. 58.

⁵⁶ United Nations, *Security Council Resolution 1284* (1999), S/RES/1284, New York, 17 December 1999.

⁵⁷ United Nations, *Press Release*, SG/SM/6357 ORG 1251(13 October 1997.); United Nations, Secretary General, Kofi Anan, "Renewing the United Nations: A Program for Reform." (A/51/950), para. 187.

however, are relatively stable in their functions and thus can exercise considerable influence.⁵⁸

The OIP functions as the central point of information. The Office's overall responsibility is the coordination and tracking of activities in all stages of the OFF program. Initially the main responsibility of the OIP was contract processing and monitoring. In this area, one of the main responsibilities of the OIP is to evaluate, process, circulate, and approve applications for the import of goods into Iraq. The staff of the OIP scrutinizes applications to ensure that they are complete and correct. In addition, it sees that applications are examined by custom officers to evaluate the price and value of items to ensure that applications are consistent with the approved distribution plan. The OIP also provides the Iraqi sanctions committee with all information on contract priorities, interrelated and time-sensitive applications and contracts, required delivery dates of items and on potential dual-usage items and spare parts. Furthermore, any amendments and extensions of validity periods of applications or cancellations of applications are processed by the OIP. In the last stage, applications are then circulated to the Iraqi sanctions committee for its scrutiny.

Moreover, the OIP is responsible for the coordination and allocations of funds in the UN Iraq account. All proceeds of Iraqi oil sales and all payments for goods are controlled through the UN-administered and UN-supervised account. Funds are distributed in each approximately 180-day period into seven separate funds under the terms of Security Council Resolution 986 (1995), pursuant to paragraph 8 (a) to (g) and are used for a number of purposes.

With the growth of the program, the OIP's responsibilities have expanded. They include now the circulation and approval of applications, the authentication of the delivery of goods, and the coordination of the distribution of goods in Iraq.⁵⁹ In collaboration with UN independent inspection agents, stationed at commodity entry points in Iraq, the OIP oversees the confirmation of the arrival of goods in Iraq.

Moreover, the OIP forwards information acquired under the ongoing monitoring mechanism to assure the Iraqi sanctions committee that the supplies authorized and delivered, including potential dual-usage items and spare parts, are indeed used for the purpose envisioned and not used for any other purposes not authorized. To ensure ongoing monitoring, inspections of items can take place at border crossings, end user sites and/or other locations.⁶⁰ It is this information presented by the OIP that assures the Iraqi sanctions committee that the United Nations observation mechanism implemented to oversee the use of items in Iraq operates effectively.⁶¹

2. The UN Office for the Coordination of Humanitarian Affairs (OCHA) & Office of the United Nations Humanitarian Coordinator in Iraq (UNOHCI)

The Department of Humanitarian Affairs (until 1998) was re-named the Office for the Coordination of Humanitarian Affairs (OCHA) by the UN Secretary General in 1992. "The OCHA is part of the United Nations Secretariat and has the mandate to coordinate UN assistance in humanitarian crises that go beyond the capacity and mandate of any

⁵⁸ Conlon, UN Sanctions Management, p. 18.

⁵⁹ United Nations, OIP, Link to "Information for Companies and Delegations."

⁶⁰ United Nations, *Letter dated 7 December 1995 from the Chairman of the Security Council Committee Established by Resolution 661 (1990) Concerning the Situation Between Iraq and Kuwait Addressed to the President of the Security Council*, S/RES/1071 (1995) New York, 7 December 1995.

⁶¹ OIP-Home Page, the Role of the OIP.

single humanitarian agency."⁶² In the case of Iraq, the UN Inter-Agency Humanitarian Program was established under the control of the OCHA in May 1991. Until 1996 the UN Inter-Agency Humanitarian program was funded by voluntary donations from the international community. Funding from 1991 to 1996 totaled \$964 million. After the implementation of the OFF program in 1995, the funding was provided from revenues generated by the sale of Iraqi oil.

The objective of the OFF program under the authority of OCHA is the procurement and distribution of essential civilian humanitarian supplies as well as rehabilitation activities for the three northern Iraqi governorates, Dahuk, Erbil and Sulaymaniyah.⁶³ The OFF program is to take into consideration all relevant circumstances not only for the three northern governorates, but also in the rest of the country in the Distribution Plan, in order to ensure equitable distribution of goods.⁶⁴

To facilitate these objectives, the Office of the United Nations Humanitarian Coordinator in Iraq (UNOCHI) was created. The Office of the Humanitarian Coordinator is an integral part of the Office of the Iraq Program, with the Coordinator of OHCI reporting to the Executive Director of the OFF program, presently Benon V. Sevan. The UNOCHI is based in Baghdad. The UN Coordinator is assisted by two Deputy Coordinators, located in Baghdad and Erbil, respectively.⁶⁵

The Department of Humanitarian Affairs established a complex observation and reporting mechanism that assisted the Humanitarian Coordinator to ensure the equitable

⁶² OCHA-Home Page. "About OCHA," <http://www.reliefweb.int/ocha_ol/about/index.html>.

⁶³ United Nations and government of Iraq, *Memorandum of Understanding*, para. 20 and para. 3 and 6 of its Annex I. 20 May 1996.

⁶⁴ *Ibid.*, para. 2 of annex I.

⁶⁵ United Sanctions, *Report of the Secretary General*, S/1996/978. Part IV, para.25.

distribution of humanitarian supplies to meet Iraq's humanitarian needs.⁶⁶ Several UN departments are part of this mechanism. The World Food Program (WFP), the World Health Organization (WHO), the United Nations Children's Fund (UNICEF) and the United Nations Development Program (UNDP).

Former UN Humanitarian Co-ordinators for Iraq include Mohammed Zejjari (Algeria, 1995), Gultiero Fultcheri (Italy, 1996), Steffan De Mistura (Sweden, 1997), Denis Halliday (Ireland, 1997), Hans von Sponeck (Germany, 1998), Tun Myat (Myanmar, 2000) and Lopes da Silva (Portugal, 2002). Denis Halliday and Hans von Sponeck have been loud voices in their critiques of the sanctions. Both left their office in protest against the sanctions implemented and have tirelessly worked to create public awareness against the sanctions regime.

3. The Government of Iraq (GOI)

The Government of Iraq has three main responsibilities in the implementation of the OFF program. Each export of goods to Iraq has to be at the request of the Government of Iraq.⁶⁷ According to the Memorandum of Understanding signed between the Secretariat of the United Nations and the Government of Iraq, the Government of Iraq prepares a categorized list of humanitarian supplies, which it intends to purchase and import. Purchases are based on a plan (the Distribution Plan).⁶⁸ Initially, the Distribution Plan allocated funds, mainly to those humanitarian supplies, which were needed urgently such as food and medicine. The Distribution Plan lists all the goods for which contracts are to be signed under the OFF program.⁶⁹

⁶⁶ Ibid., para 26.

⁶⁷ United Nations, *Security Council Resolution 986 (1995)*, para. 8(a).

⁶⁸ United Nations, *Memorandum of Understanding*, para.6.

⁶⁹ United Nations, Office of the Iraq Program, *Glossary*.

The Distribution Plan also contains corresponding estimated financial allocations relating to different sectors of the economy.⁷⁰ Supplies and goods for import to Iraq are also categorized into 'sectors' such as food, health, and electricity. A new Distribution Plan must be prepared and submitted by the Government of Iraq for each phase. Each plan is submitted to the Secretary General for its approval.⁷¹ (The first distribution plan was submitted on 15 July 1996.) Once the Secretary General approves the plan, he forwards a copy of the categorized list of the supplies and goods to the Iraqi sanctions committee. After the plan becomes operational, modifications can be made.⁷²

The Government of Iraq is also responsible for the distribution of goods in the centre and the south of the country. For this purpose, the Government established a special rationing system. The system was launched on 1 September 1990 after the imposition of sanctions. The distribution of goods is provided through a centralized network of food warehouses and distribution centres that supply rations to private retail stores, which in turn distribute monthly rations to households within their area.⁷³

The political system and internal workings of the Government of Iraq further influences the implementation of the OFF program. Various Iraqi ministries are involved in the implementation of the OFF program, including those for agriculture and agrarian reform, defense, education, finance, foreign affairs, health, higher education and scientific research, trade, and transport.⁷⁴ A strong hierarchy exists within the ministries, the Minister of Defense, the Minister of Foreign Affairs, the Minister of Interior, and the

⁷⁰ United Nations, *Interim Report by the Secretary General*, part III, para.14, S/1996/978, explains that the Iraqi Ministry of Trade undertakes on a monthly basis, the distribution of foodstuffs to the retail rations agents. To distribute goods to the population in the centre and the south, the Government of Iraq enters into contracts with suppliers of its choosing. Food and flour retail agents from the private sector are used to distribute commodities to the population. All Iraqi citizens, Arab and foreign residents in Iraq are entitled to a ration card.

⁷¹ United Nations, *Memorandum of Understanding*, para.6.

⁷² United Nations, *Report of the Secretary General*, S/1996/978, para.15.

⁷³ *Ibid.*, Part I, para. 28.

Minister of Trade being the most powerful ministries. In accordance with their importance, different ministries have different authorities and resources, and are differently organized. Most of the 'lower status' ministries, such as Health and Education are dependent on higher- ranking authorities to verify their decisions. Most ministries need to get contract approvals by their superiors before they can make decisions on contracts under the OFF program. According to the Secretary General Report of Phase V, "the rigid hierarchy in the Ministry of Health administration ... makes it difficult for functionaries to approve deliveries without approval of superiors, and this takes time."⁷⁵

Overall frustration with these influences became evident in talks held with OIP staff in New York in September 2002. The limited authority of Ministries to act independently and to make decisions without the approval of higher authorities combined with a lack of resources, a lack of knowledge and skills of Iraqi staff to organize and coordinate the OFF program, strongly influence the overall implementation of the OFF program negatively.⁷⁶ In addition, the Government of Iraq has been successful in using its authority to choose its oil sales partners and trade contracts to derive political backing by neighbouring countries and individual Security Council members.

C. Background and General Description of the OFF Program

1. Pre-Oil-for-Food Years: 1991-1995

In reaction to reports by the UN mission⁷⁷ on the development of a humanitarian crisis in Iraq caused by the implementation of sanctions and the Gulf War, the UN Inter-Agency Humanitarian Program (IAHP) was established in May 1991. Its objective was to raise funds for emergency humanitarian assistance in Iraq. Funding for the IAHP was

⁷⁴ US Library of Congress Country Study - Iraq, <http://lcweb2.loc.gov/frd/cs/igtoc.html>, (Nov.02).

⁷⁵ United Nations Security Council, *Report of the Secretary General*, Phase V, 90- days, para.31.

⁷⁶ United Nations Headquarters, Interviews with staff of the Office of the Iraq program, September 2002.

received from appeals to the international community between 1991-1996, issued on a voluntary basis, to cover the most pressing and initial humanitarian needs of vulnerable groups in Iraq. On April 8, 1991 the Secretary General issued the first of these appeals, for \$178 million. On April 12, 1991 a second appeal was issued for \$400.2 million in emergency aid for refugees and displaced persons on the borders of Iraq and Turkey and Iran. A third appeal was issued on May 15, 1991 for \$415 million in emergency humanitarian assistance.⁷⁸ Moreover, the cease fire resolution 687 (3 April 1991) decided that the sanctions implemented should not apply to foodstuffs, medicine and health supplies. These items needed approval by the Iraqi sanctions committee, but were submitted to it under its 'no-objection' procedures.⁷⁹

In August 1991, the Security Council offered the first, but very limited, opportunity for Iraqi oil to be sold for the purchase of humanitarian goods. The initial process of the OFF program was outlined by resolutions 706 (15 August) and 712 (19 September) 1991. Resolution 706 (1991) proposed a program that was unique among the humanitarian assistance operations undertaken by the United Nations, in that it sought to mitigate some of the negative effects of sanctions imposed on the recipient country. It was also unlike traditional humanitarian 'aid' operations in that it was financed, according to Security Council Resolution 687 (1991), 692 (1991) and 699 (1999) and reaffirmed by Security Council Resolution 706 (1991) in its *totality* by the sanctioned country, Iraq, and therefore did not constitute 'aid'.⁸⁰

⁷⁷ United Nations Security Council, *Reports by Prince Sadruddin Aga Khan (17 July 1991) and Under Secretary General Mahtassari, S/22366*, 20 March 1991.

⁷⁸ United Nations, *The United Nations Blue Book Series*. Department of Public Information, p.108.

⁷⁹ United Nations Security Council, *Security Council Resolution 687 (1991)*, New York, 3 April, 1991, para.20.

⁸⁰ United Nations Security Council, *Security Council Resolution 706 (1991)*, New York, 15 August 1991, p.1.

It states: "...Iraq is required to pay the full cost of the Special Commission and the International Atomic Energy in carrying out the tasks authorized by section C of resolution 687 (1991)...most obvious way of obtaining financial

The implementation of the OFF program was, however, not exclusively motivated by humanitarian concerns. Exceptions to the comprehensive sanctions and the oil embargo imposed by resolution 661 (1990) were also admitted in reaction to the need for revenue to implement the cease fire resolution, specifically its disarmament provisions. To cover the costs of the sanctions implemented and to establish a mechanism that would help ease the humanitarian influences of the sanctions, resolutions 706/712 (1991) developed a mechanism for the control and management of Iraqi oil revenues. Security Council Resolution 706 permitted Iraq to make limited emergency oil sales of \$1.6 billion over a six-month period. All money generated through the sale of Iraqi oil was to be channeled through an UN-supervised escrow account. The generated revenue was to be used for the purchase of foodstuffs, medicine and related materials. All purchased items were to be screened and approved and were subject to monitoring and supervision inside Iraq. Additional revenue was used to fully cover all war compensation claims of Kuwait and the financing of the activities of the UN Compensation Fund. The establishment and the financing of the activities of the United Nations Special Commission (UNSCOM)⁸¹ were also covered in their totality by the funds generated through the sale of Iraqi oil. The Iraqi sanctions committee established by resolution 661 (1990) was to oversee the implementation of the sanctions and the OFF program.

Iraq refused to accept this proposal, and negotiations between the Government of Iraq and the United Nations halted for four years. According to Eric Hoskins, the Government of Iraq refused these initial proposals on two main grounds. First, it argued

resources from Iraq to meet those costs would be to authorize the sale of some Iraqi petroleum and petroleum products..."

that the mechanism as outlined in resolution 706 (1991) was a violation of Iraqi sovereignty.⁸² Second, Iraq argued against any proposal that would link humanitarian assistance with payments for war reparations and for UN administrative purposes used to implement the sanctions objectives.⁸³

The follow-up resolutions 712 (1991) and 778 (1992) did not respond adequately to Iraq's concerns, but rather reaffirmed the same limited oil export ceilings and the same procedures by which Iraq was allowed to purchase goods.⁸⁴ Throughout these years the Inter-Agency Humanitarian Program remained one of the few sources of income to relieve the humanitarian crisis in Iraq. Some UN agencies such as UNICEF were able to accumulate additional but limited financial sources to help the humanitarian situation.⁸⁵ According to UN reports, total funds of \$964 million were received under the Inter-Agency Humanitarian Program from 1991 to 1996. While appeals continued to donors to contribute voluntarily to fund UN humanitarian activities in Iraq, the failure of the parties to negotiate on the implementation of the OFF program created enormous economic and social consequences for Iraq's civilian population.⁸⁶

2. Oil-for-Food Program: 1995-1998

Negotiations on the OFF program resumed in 1995 after the UN made some concessions and adopted resolution 986 (14 April 1995).⁸⁷ Resolution 986 provided for a "revised Oil-for-Food" formula. Under resolution 986, Iraq was made subject to a UN - supervised monitoring system which authorized and controlled the revenue generation

⁸¹ Ibid.

⁸² Eric Hoskins, "Humanitarian Impact of Economic Sanctions and War in Iraq" in Weiss, Cortright, Lopez and Minear (eds.) *Political Gain and Civilian Pain*. p.97.

⁸³ Ibid.

⁸⁴ United Nations Security Council, *Security Council Resolution 712*, S/RES/712, 19 Sept. 1991 and *Security Council Resolution 778*, 2 October 1992.

⁸⁵ UNICEF, *UNICEF Programs and Activities in South-Centre Iraq-1990s*, Overview.

⁸⁶ United Nations, *Blue Book Series*, pp. 112-113.

through the sale of Iraqi oil, the distribution of the revenue for purchases of goods, and the distribution of goods in the north of Iraq. The 'revised Oil-for-Food' increased the limits on Iraq's oil exports from \$1.6 billion to \$2 billion in each six month period. In addition, the UN's demand for involvement in the distribution and supervision of humanitarian supplies in Iraq was reduced and limited. UN supervision and distribution of goods was limited to the three Kurdish northern governorates of Dahuk, Sulaymaniyah and Erbil under the supervision of the UN Inter-Agency Humanitarian Program. The distribution of goods in the larger part of the country, in the 15 governorates in the centre and south, remained the responsibility of the Government of Iraq. The UN's responsibility was limited to observation but not to the implementation of the OFF program in the larger part of the country. To the United Nations limited observation seemed necessary to ensure that supplies were received by all segments of the Iraqi population equitably.*

The 'revised Oil-for-Food' mechanism was initially rejected by the Government of Iraq. According to the Secretary General, the Government of Iraq objected to the proportion of petroleum to be exported via one of the pipelines in addition and to details in the distribution of humanitarian items in the three northern governorates.⁸⁸ Following extensive negotiations regarding the implementation of Security Council Resolution 986, a *Memorandum of Understanding* (S/1996/365) was eventually signed between the Government of Iraq and the United Nations Secretariat on 20 May 1996. The OFF program implemented in accordance with the Memorandum of Understanding was divided into phases that correspond roughly to 180 days. Phase I of the OFF program

⁸⁷ United Nations Security Council, *Security Council Resolution 986*, New York, 14 April 1995.

officially began with the first pumping of Iraqi oil for export on December 10, 1996. The first proceeds from the sale of Iraqi oil were deposited into the UN Iraq Account (Escrow Account) on January 15, 1997. The first limited shipment of food commodities under Phase I did not reach Iraq until March 20, 1997, almost twenty months after the adoption of Resolution 986.⁸⁹

The initial oil export ceilings imposed by the Security Council limited Iraq's ability to export oil for revenue. In Phases I to III, oil export ceilings were set at US\$ 2 billion for each 180 day period. In these initial phases, the primary obstacle to improving the humanitarian situation in Iraq was the lack of sufficient revenue from the sale of Iraqi oil, due to the limited export ceilings. In Phases II and III Iraq refused to pump oil and delayed pumping oil for export under the OFF program.⁹⁰ These delays led to funding shortfalls. In reaction and after a review of the humanitarian situation in Iraq in Phase III, the Secretary General recommended that oil production ceilings be raised. This recommendation was based on the assumption that a greater gross allocation could provide for a broader humanitarian program within the OFF. It was assumed that Iraq would be able to produce oil up to \$5.2 billion.⁹¹

On February 20 1998, resolution 1153 authorized the production of oil up to \$5.2 billion.⁹² Iraq, however, was unable to take advantage of any increases in oil exports

⁸⁸ United Nations Office of the Iraq program, *Review and Assessment of the Implementation of the Humanitarian Program established Pursuant to Security Council Resolution 986 (1995) (December 1996-November 1998)*, para.6.

⁸⁹ United Nations, OIP, "Implementation of Oil for Food - A Chronology"; also see UN OFF Two Year Review, *Review and Assessment of the Implementation of the Humanitarian Program established Pursuant to Security Council Resolution 986 (1995) (December 1996-November 1998)*, para.8.

⁹⁰ Ibid. see 8 June 1997: "...the Iraq Government announces that oil will not be pumped under this phase until a new distribution plan is approved by the secretary general." 14 August 1997: "The two month delay in the pumping of oil creates an estimated shortfall in revenue at \$US 500 million." Also see: 5 December 1997: "Phase III officially begins. The Iraqi Government announces that pumping of oil under SCR 1143 will not flow into the pipeline until a third distribution plan is approved by the Secretary General."

⁹¹ UN OFF Two Year Review, *Review and Assessment of the Implementation of the Humanitarian programs established Pursuant to Security Council Resolution 986 (1995) (December 1996-November 1998)*, para.14.

⁹² United Nations Security Council, *Security Council Resolution 1153 (1998)*, 20 February 1998.

under the OFF program due to declining oil prices. Oil prices fell from an average of \$17.99 per barrel in Phase I (December 1996) to \$16.74 in Phase II (June 1997) and to \$12.18 per barrel in Phase III (December 1997).⁹³ By October 1998 oil prices had fallen below \$10 per barrel.⁹⁴ Simultaneously, oil industry experts reported on the 'lamentable state' of Iraq's oil industry, casting doubt on Iraq's oil production capabilities.⁹⁵ With the adoption of an "enhanced distribution plan" on May 30, 1998, which allocated an additional \$3.1 billion to the humanitarian program and included a \$300 million allocation for oil spare parts, the amount expected for oil exports was lowered to \$4.8 billion, but more than doubled the OFF program.⁹⁶ Moreover, resolution 1153 (1998) requested the Secretary General to provide the Security Council with a specific assessment of the electricity sector and to treat the electricity sector as a separate sector of the overall allocations.⁹⁷ According to the Secretary General,

The enhanced distribution plan provided...greater detail on the objectives and priorities for each sector. It also included details on priority requirements in the categorized lists contained in the sectoral annexes...the Government...insisted on the inclusion of the electricity sector as parts of the overall allocation.⁹⁸

Most of the objectives as set out in the enhanced distribution plan were not met due to revenue shortfalls.⁹⁹ By the Fall of 1998, various reports continued to warn of the continuing deterioration of Iraq's oil industry.¹⁰⁰ Further declines in oil prices and

⁹³ United Nations Security Council, *Report of The Secretary General Pursuant to Paragraph 4 of Resolution 1143 (1997)*, S/1998/194, (4 March 1998), p.2. para.4.

⁹⁴ United Nations, OIP, *Statement by Benon V. Sevan, Executive Director of the Iraq Program to the Security Council, September 4, 1998*.

⁹⁵ United Nations. *Letter dated 15 April 1998 from the Secretary General addressed to the Security Council*, S/1998/330, 15 April, 1998, p.3.

⁹⁶ United Nations, "OIP - Chronology," See: 29 May 1998.

⁹⁷ United Nations Security Council, *Security Council Resolution 1153 (1998)*, para. 11.

⁹⁸ United Nations office of the Iraq program, *Review and Assessment of the Implementation of the Humanitarian Program established Pursuant to Security Council Resolution 986 (1995) (December 1996-November 1998)*, para.19.

⁹⁹ *Ibid.*, para. 20.

¹⁰⁰ Patrick Cockburn, "UN Official Quits in Row Over Aid to Iraq," *The Independent*, 07/23/1998.

For an analysis on this period also see: Richard Garfield, *Morbidity and Mortality Among Iraqi Children from 1990 through 1998*, <www.forthfreedom.org> (November 2002).

growing delays in the approval process of contracts, specifically of oil spare parts and equipment, continued to hamper the implementation of the OFF program. In addition to these, the repeated threat and use of force against the Government of Iraq, in reaction to the blocking of UNSCOM access to sites, led to re-occurring temporary redeployments of OFF staff to Amman and Jordan. Observation of the OFF program was therefore taking place only on reduced levels.¹⁰¹ Military actions by the United States and the United Kingdom led to the complete withdrawal of UN staff in December 22, 1998.¹⁰² According to reports, severe damage was caused to Iraq's infrastructure by air strikes. These damages made the implementation of the OFF program even more difficult.¹⁰³

3. Oil-for-Food Program: 1999-2002

During Phases IV and V, oil prices continued to hover only between \$8 and \$9 per barrel. In early 1999, additional amounts of oil exports were authorized in Phase VI to make up for the deficits experienced during the past phases.¹⁰⁴ Simultaneously, the Secretary General recommended the increase of allocations for oil spare parts and equipment from \$300 to \$600 million. Concerns regarding the growing numbers of holds placed on applications were also expressed.

A review of the workings of the OFF program highlighted areas of concern and proposed measures for their improvement.¹⁰⁵ One area of concern was that, with the growing scope of the OFF program after Phase III, the staff of the OIP was simply overworked. According to Benon Sevan, an average of 1000 applications was received

¹⁰¹ United Nations Office of the Iraq Program, *Statement by Benon Sevan*, 12 November, 1998.

¹⁰² US General Accounting Office, *Report of US States General Accounting Office, May 2002*, states; "Dec 16, 1998. Following Iraq's recurrent blocking of U.N. weapons inspectors, president Clinton orders 4 days of air strikes against military and security targets in Iraq that contribute to Iraq's ability to produce store, and maintain weapons of mass destruction and potential delivery systems." Timeline of Major events related to Sanctions against Iraq.

¹⁰³ UNICEF, Iraq web site, Overview, November 27, 2002.

¹⁰⁴ *Ibid.*, states: 4 October 1999. \$3.04 billion of oil was authorized for export by resolution 1266 (1999).

in Phase III for the export of items to Iraq. In comparison, in Phase V, over 2,100 applications were received, doubling the number of contracts to be reviewed. In addition the length of the contracts had increased drastically, adding considerably to the workload of the OIP. Sevan states, in an introductory statement to a report of the Secretary General,

We have received about 90 per cent of the contracts expected for Phase V - some 2,100 applications with about 51,000 line items. The number of contracts has doubled and the number of line items has increased by 250 per cent - reflecting the difference between buying simple commodities and dealing with \$80 million contracts to restore generating capacity at major power stations. Our current projection is that Phase VI will involve around 3,900 applications with about 90,000 line items.¹⁰⁶

The high numbers of applications received led to longer processing times of applications and delayed circulation to the Iraqi sanctions committee for review. In addition, faulty applications by missions would lead to delays in the processing time. Many of the applications received needed to be sent back to the mission and the companies for additional information or completion. The adoption of electronic submissions of contracts did not decrease the work load of the staff at first.¹⁰⁷ At the end of Phase V, oil prices started to recover from \$8.60 a barrel to a high of \$15 per barrel.¹⁰⁸ The oil market, however, remained volatile.

The ceiling on Iraq's oil exports was completely removed with the adoption of resolution 1284 (1999). This decision was based on the assumption that Iraq would be able "to stabilize its oil industry by easing damages to its oil reservoirs and environmental

¹⁰⁵ United Nations office of the Iraq program, *Review and Assessment of the Implementation of the Humanitarian Program established Pursuant to Security Council Resolution 986 (1995) (December 1996-November 1998)*, para. 19.

¹⁰⁶ United Nations Security Council, *Report of the Secretary General Pursuant to Paragraph 6 of Resolution 1242 (1999)*, S/1999/1162; Introductory Statement by Benon V. Sevan, *Informal consultations of the Security Council - Wednesday, 17 November 1999*.

¹⁰⁷ Ibid.

contamination while sustaining maximum output."¹⁰⁹ Resolution 1284 (1999) also arranged for changes to contract approval processes. The creation of a 'no objection' list of items, which could be imported without individual contract approval by the Iraqi sanctions committee under 'accelerated or fast track procedures' was supposed to speed up and limit the number of applications placed on hold. This list ensured that items subject to the provisions of resolution 1051 (1996) were not included.¹¹⁰ Resolution 1284 also established the United Nations Monitoring, Verification, and Inspection Commission (UNMOVIC) to replace UNSCOM. In addition, resolution 1284 (1999) also debated the possibility of a 'cash component' for Iraq to pay for local costs of implementing the OFF program. It was argued that cash was required to pay for labour and local materials.¹¹¹

It was anticipated that the nature of the OFF program would transform due to Iraq's ability to export unlimited amounts of oil and to import a wider range of goods. Until then, it was argued that the Iraqi Government had only sufficient resources to meet its most pressing needs. After 1999 it was argued that the Government could increasingly think about repair work and reconstruction. The removal of oil export ceilings, however, could not have had a substantial impact since Iraq's oil industry was not able to increase oil production to substantive levels.¹¹² However, oil market prices had started to recover substantially since Phase VI.¹¹³ This in combination with the removed oil export ceilings allowed the OFF program's range to expand substantially and its activities increased "...from providing emergency humanitarian relief to

¹⁰⁸ United Nations, Benon V. Sevan, *Introductory Remarks by Benon V. Sevan Executive Director of the Iraq Program Security Council Consultations 21 May 1999*.

¹⁰⁹ James A. Placke, CERA Director for Middle East Research, *Report*, January 2000.

¹¹⁰ United Nations, *Report of the Secretary General pursuant to paragraph 32 of Security Council Resolution 1284 (1999)*, S/2000/22, 14 January 2000, para.11.

¹¹¹ United Nations Security Council, *Security Council Resolution 1284*, 17 December 1999.

¹¹² Tim Niblock, *Pariah States and Sanctions in the Middle East*, p.125.

encompassing many aspects of rehabilitation of essential civilian infrastructure.”¹¹⁴

Allocations for oil spare parts were increased from \$300 million to \$600 million, by resolution 1293 (31 March 2000).¹¹⁵

However, while food and medicine continued to arrive in Iraq the overall humanitarian situation continued to decline. Tun Myat, the UN Coordinator in Iraq in 2000, stated in a press briefing,

The food distribution system in Iraq under the “oil for food” program was second to none, but unless the basics — housing, electricity, water, and sanitation -- were restored, the overall well-being of the people would not improve...¹¹⁶

According to Myat, the overall poverty of Iraqi civilians had begun to undermine the OFF program by encouraging the sale of items on a black market.

In February 2001, various reports suggested that revenues had become available in excess of the value of contracts submitted for the purchase of goods by the Government of Iraq.¹¹⁷ It was argued that the Iraqi Government was holding back on the spending of money available under the humanitarian program and that it was the government's responsibility rather than the inefficiency of the OFF program that was causing hardship for the Iraqi people. According to these reports, Iraq was delaying the rate of submissions of applications for the purchase of items. "As of January 15, 2001 the total value of the supplies Iraq wanted to purchase and submitted to Sevan's office for

¹¹³ United Nations Office of the Iraq Program, *Oil exports under the United Nations Oil-for-Food program, 1998-2000*, Phase VII. <<http://www.un.org/Depts/oip/background/oilexports98-00.html>>.

¹¹⁴ United Nations Security Council, *Security Council Extends provision Of Iraq 'Oil-for-Food' Program, Unanimously Adopting Resolution 1352 (2001)*, SC/7067, 4324th Meeting, 1 June 2001.

¹¹⁵ United Nations Security Council, *United Nations Security Council Resolution 1293 (2000)*, New York, 31 March 2000, also see *Report of Secretary General*, S/2000/208, 10 March 2000.

¹¹⁶ United Nations, *Press Briefing by UN Coordinator in Iraq*, 19 October 2000.

¹¹⁷ Gerard McHugh, “Improving the humanitarian situation in Iraq: Oil for Food’ Post Resolution 1284. (1999)” September 4, 2000.

clearance was just over \$4.26 billion while there was actually more than \$7.98 billion allocated in the OFF program's budget..."¹¹⁸

Subsequent resolutions continued to expand the range of the OFF program. However, while oil revenue increased, procedural shortcomings of the OFF program did not improve. In addition, in late 2000 numerous newspapers stated that the Iraqi Government had found ways to successfully circumvent the OFF program by pushing oil through a lucrative black market and by introducing surcharges on its oil as a way of creating hard currency outside of the OFF-controlled revenue.¹¹⁹ Iraq's oil smuggling scheme had been widely acknowledged and was supposedly mainly benefiting its neighbours, Jordan, Syria and Iran. News reports stated that Iraq had re-activated a long dormant oil pipeline to Syria in the fall of 2000. As an article states: "...Syrian oil exports recently jumped about 10000 barrels a day, even though that the country has little ability to boost production on its own."¹²⁰

In a further effort to minimize unnecessary holds on items and to tighten controls over revenue potentially generated outside of the OFF program, resolution 1382 (2001) affirmed for the first time procedures for the implementation of an extensive Goods Review List (GRL).¹²¹ The objective of this resolution was to create an exhaustive list that would include most, if not all, items that are of dual-use nature potentially placed on hold by the Iraqi sanctions committee.¹²² It was assumed that by developing such a list,

¹¹⁸ Judy Aita, "Iraq Lagging in Buying Food, Medicine for Need, UN Complains," USINFO, <www.globalpolicy.org> (10/02/01)

¹¹⁹ Christopher Cooper, *Wall Street Journal*, March 14, 2001.

¹²⁰ Ibid.

¹²¹ United Nations Security Council, *United Nations Security Council Resolution 1352 (2001)*, S/RES/1352.

¹²² According to CASI, the annexed list has three parts: (A) the existing list developed by the UN technical bodies charged with disarming Iraq's nuclear, biological and chemical weapons and mid- to long-range missiles; (B) a document from the US mission to the UN, containing 149 pages of items based on the Wassenaar Arrangement, a 1996 export control regime that evolved from Cold War controls; and (C) eight pages of assorted items. Part C generally adds further controls to items in Part B. For example, Part B controls bathymetric survey systems with three

holds placed on goods could be limited.¹²³ As part of these procedures the Iraqi sanctions committee approved in 2001 a mechanism of a partial approval of goods in applications under the Committee's 'no objection' procedures. This procedure was to minimize and oppose the blocking or placing on hold of an entire application that could contained an objectionable item.¹²⁴

The new procedures have been adopted officially by resolution 1409 (2002) on 14 May. The resolution includes a list of extensive dual-use items and outlines the procedures for the application of this list.¹²⁵ While all military items are still prohibited from entering Iraq, all civilian goods not on the GRL are approved automatically for import by Iraq.¹²⁶ According to the OIP, the OFF program remains in a state of constant financial crisis:

the OFF program implementation is increasingly facing a financial crisis due to the substantial drop in revenues received from Iraq oil exports under the OFF program... The total value of all holds remaining is \$5.32 billion. If this amount were freed up, the OFF program would experience a shortfall of \$6.9 billion.¹²⁷

As at 18 September 2002 the total quantity of oil approved under the OFF program is estimated at 9.1 billion barrels. Since the start of the implementation of the OFF program the total quantity of all humanitarian supplies and equipment delivered to Iraq reached as

sophisticated features; Part C controls those without such features. In some cases, the Part C controls do not merely add to the Part B controls, but appear to conflict with them. For example, Part B notes that controls on "optical fibre cables" do "not control standard civil telecommunications cables". Part C controls "optical fibre cables of more than 5 meters in length", without further qualification. Beyond outlining some general procedures, the resolution gives no clues as to how such conflicts might be interpreted. Parts B and C differ from Part A by not being related directly to Iraq's proscribed weapons. If the resolution's procedures were adopted, the import restrictions on goods – one element of the sanctions – would be replaced by a technology transfer control regime.

¹²³ CASI, <<http://www.cam.ac.uk/societies/casi/guide/smartsanctions.html>>.

¹²⁴ United Nations Security Council, *Security Council Resolution 1239 (2002)* refers to this procedure: "Processing of applications under paragraph 20 of resolution 687 (1991)," <<http://www.un.org/Depts/oip/background/reports/S-2002-1239.pdf>>.

¹²⁵ United Nations Security Council, *United Nations Security Council Resolution 1382 (2001)*, New York.

¹²⁶ Kelly Motz, "Will the United States strike Iraq? - What are the links between Iraq and Al Qaeda? Where is Iraq's oil going?" <<http://www.iraqwatch.org/updates/update.asp?id=pol200204121141>>.

¹²⁷ United Nations, Office of the Iraq Program, Benon Sevan, *Statement by Benon V. Sevan at the Informal Consultation of the Security Council*, Tuesday, 26 February 2002.

of 17 May 2002, about \$22 billion, including oil spare parts and equipment, valued at \$1.39 billion.¹²⁸

Summary and Conclusion

This chapter has outlined the roles and responsibilities of the main actors involved in the implementation of the program. It has also touched briefly on the political motivations of actor involved in the implementation of sanctions at large and in the implementation of the OFF mechanism especially.

The brief overview of the development and implementation of the program emphasizes that the OFF was implemented six years after the initial implementation of sanctions on Iraq in 1990. Iraq's infrastructure, oil industry, and humanitarian situation were already damaged and in a state of decay caused by the previous war with Iran and the Gulf War, and by the long term effects of the sanctions regime. Delays caused by the political interests of the United Nations members and the Government of Iraq in the implementation of the OFF program led further to severe negative influences on the Iraqi civilian population.

With the implementation of the OFF the immediate humanitarian situation of the civilian population improved. At the same time, however, Iraq's oil exports were limited and oil market prices declined. With the removal of oil export ceilings and the unprecedented growth of the program, procedural shortcomings of the OFF were exacerbated. Furthermore, the total dependence of the program on politically motivated actors to improve and act upon identified problems and shortcomings led, in general, only to slow improvements.

¹²⁸ OIP, *Note by the Office of the Iraq Program*, 24 May 2002.p.1.

Chapter III: The Overall Mechanism of the Oil-for-Food Program (OFF)

The process of contracting, processing of applications, approval by the Security Council Committee, procurement and shipment, as well as the timely distribution of humanitarian supplies within Iraq, constitutes a complex, interdependent and highly time-sensitive chain of activities involving the Security Council Committee, the Government of Iraq and other Member States, the United Nations Secretariat and the agencies and Programs concerned, as well as private firms and financial institutions.

United Nations, *Secretary General Report*, (S/1998/90), February 1, 1998.

This chapter explains the general flow of the OFF system. It provides a necessary basis for a more detailed analysis of the OFF program. The OFF program is divided into five main stages. It begins with Iraq's oil production and revenue generation mechanism and explains the oil export procedures in place. Stage two is the allocation of funds for purchase of goods by Iraq. Stage three is the processing, screening and monitoring of Iraq's purchases. Stage four is the mechanism of arrival, verification and transportation of goods to the end-user, the Iraqi population. The complex observation mechanism implemented by the UN is outlined in stage five. Each stage is explained and problems arising in each stage are highlighted.

Stage I: Iraq's Oil Production and Revenue Generation

1. Iraq's Oil Production

Iraq has four main land oil producing fields in the north - Kirkuk, Jambur, Bai Hassan, Khabaz - and one main producing field in the south, South Rumaila.¹²⁹ From the oil fields the oil is pumped to several refineries. Refineries are either located in Kirkuk (Northern Oil Company) or are based in the south in Basrah (the Basrah Refinery or Southern Oil Company.) Part of the oil is used for local use while the rest is used for

export. Some oil that is exported flows via the Kirkuk-Yumurtalik pipeline to Turkey. Turkey charges a pipeline fee for the transportation of oil to a pumping station.¹³⁰ Two main oil terminals are used for the lifting, loading, and transfer of Iraqi oil. They are the offshore terminal at Mina al-Bakr, at the head of the Gulf, and the Ceyhan oil terminal, with a pipeline outlet, which is based in Turkey.

Iraq's oil production capabilities are influenced by the overall condition of its oil industry. In the first three phases of the OFF program there was no special allocation of funds for oil industry spare parts or equipment. Beginning in Phase IV, Iraq was allowed to import up to \$300 million in oil spare parts. The Government took advantage of the Distribution Plan allocation in these phases to maximize oil spare part imports.¹³¹ Out of the total allocation, approximately \$247 million worth of spare parts were delivered to Iraq for Phase IV and V. Funding for oil spare parts was increased from \$300 to \$600 million starting in Phase VI. Funding remained on this level until Phase XIII.

Even though allocation for oil parts were raised to \$600 million in Phase VI, only approximately \$340 million worth of oil spares and other equipment was delivered to Iraq due to holds and other contract issues. This amount has continued to decrease: in Phases VII and VIII only approximately \$97 million worth of oil spare parts were delivered to Iraq. The Secretary General emphasized in his report on Phase VIII the overall decline in the condition of all sectors of the oil industry and warned of the possible failure of the Iraqi oil industry to sustain production levels.¹³²

¹²⁹ Saybolt Nederland B.V. *Report of The Group of Experts Established Pursuant To Paragraph 12 of The Security Council Resolution 1153 (1998)*, p. 30.

¹³⁰ United Nations, *Memorandum of Understanding Between the Secretariat of the United Nations and the Government of Iraq on the Implementation of Security Council Resolution 986 (1995) S/1996/356*, Section VI, para. 16-18.

¹³¹ United Nations, *Statement by Benon V. Sevan Wednesday September 25, 2002*. New York, 25 September 2002.

¹³² United Nations Security Council, *Report of the Secretary General Report*, Phase VIII. 180 days.

2. Oil Export Procedures

Before the oil can be sold, a pricing formula for oil exports must be established to ensure that Iraqi oil is sold at fair market prices. Oil overseers, in collaboration with the Iraqi State Oil Marketing Organization (SOMO), develop the pricing formula and recommend prices to the Iraqi sanctions committee for its approval.¹³³ The oil pricing formula is sent to the overseers for their analysis and for recommendations. SOMO submits pricing for approval to the Iraqi sanctions committee. The Iraqi sanctions committee reviews the pricing under its no-objection procedure and either accepts or rejects the proposal.¹³⁴

The Government of Iraq chooses its trade partners for the sale of oil. SOMO, on behalf of the Government, negotiates the purchase with the potential oil buyer. A report by the nonprofit Coalition for International Justice monitoring human rights world wide, published in September 2002 explains,

The Government of Iraq has repeatedly stated that it will use its contracting ability, in both oil sales and the purchase of humanitarian goods, to reward its supporters in the international community....over the course of five years of oil exports under the UN program, the bulk of the contracts have gone to Russian firms...nevertheless, the largest end-consumer of the Iraqi oil has been the United States. While the Iraqis have threatened to "blacklist" any companies found selling Iraqi oil to the US, in practice they cannot prohibit their oil from ending up there.¹³⁵

Stage II: Allocations of Funds

1. The Iraq Account

All proceeds of Iraqi oil sales and all payments for goods are controlled through an UN-administered Iraq account. Funds deposited in each 180 day phase are further

¹³³ United Nations Security Council, *Memorandum of Understanding Between the Secretariat of the United Nations and the Government of Iraq on the Implementation of Security Council Resolution 986 (1995)* S/1996/356, Annex II, para. 1.

¹³⁴ United Nations Security Council, *Interim Report by the Secretary General on the Implementation of Security Council Resolution 986 (1995)*, S/1996/978, para. 12 -13.

¹³⁵ Coalition for International Justice, "Sources of Revenue for Saddam & Sons: A Primer on the Financial Underpinnings of the Regime in Baghdad," Report, September 18, 2002, p. 11.

divided into seven separate sub-accounts according to resolution 986 (1995), and are used for a number of purposes. Initially, 53% of the total budget was allocated for the purchase of food, medicine, and humanitarian supplies for the centre and south of Iraq. Approximately 13% were allocated for food, medicine and supplies for the Kurdish population living primarily in the three northern governorates of Iraq. Bulk purchases by the Government of Iraq of standard food commodities and medicines are the means of procurement of goods for the North.¹³⁶ The Government of Iraq is reimbursed by allocations from the Iraq Account for its costs accumulated for these purchases.¹³⁷ Originally, a total of 66% of the total revenue was, therefore, allocated for the purchase of humanitarian goods. The funds allocated in accordance with Resolution 986 and as outlined above constitute the humanitarian program.

Funds in the Iraqi account are, however, also allocated for other objectives. The UN Compensation Fund (UNCF) was established to finance any claims arising by Kuwait for damages inflicted by Iraq. Approximately 30% of the revenue raised in each phase was allocated for this purpose. Total awarded allocations by the Compensation Fund, as at October 2002 are approximately \$16 billion. In comparison, according to the OIP basic facts, the total of humanitarian supplies arrived in Iraq, as at September 2002 is approximately \$24 billion.¹³⁸ A report by the Global Policy Forum states

The reparation fund appears punitive and contrary to basic humanitarian principles due to its exceptionally large claim on total resources...the reparation deduction should instead be eliminated completely until humanitarian needs in Iraq are completely met.¹³⁹

¹³⁶ United Nations, *Memorandum of Understanding*, 20 May 1996, para. 3.

¹³⁷ *Ibid.*, para 2.

¹³⁸ United Nations, Office of the Iraq Program, *Basic Facts*, November 24, 2002.

¹³⁹ Global Policy Forum, *Humanitarian Implications and Options for the Future*, "War Reparations Fund: Oil-for-Compensation," p.27.

Controversies regarding the high allocations to the Compensation Fund prompted the Security Council to reduce compensation allocations from 30% to 25%, according to resolution 1330 (2000), with the additional funds being allocated to the centre and south, increasing allocations from 53% to 59%.¹⁴⁰ In addition, 2.2% of revenues were allocated for the UN's administrative costs to cover the costs of the UN inspection agents, whose responsibility is to oversee and verify the equitable distribution of goods to all segments of Iraqi society. Furthermore, to meet operating costs of the UN Special Commission (UNSCOM) and later UNMOVIC, 0.8% of revenue was allocated for administrative costs. An additional 1% of revenue is allocated for the administrative purposes of the Iraq Account.

Stage III: The Processing, Screening and Monitoring of Iraq's Purchases

Applications to the UN are the formal requests of the permanent missions of states for permission to ship goods to Iraq. These applications go through several stages of processing. Initially, all applications must go through two levels of *pre-screening* procedures. The OIP and the UN weapons inspectors screen applications *prior* to their circulation to the Iraqi sanctions committee. Pre-processing of applications include the review of the application, the assignment of a communication number (COMM.), the registration of the relevant information in the database and the assessment of its contents. In the last stage of processing, the applications are forwarded to the Iraqi sanctions committee for final decisions.

1. Initial Processing of Applications by the Secretariat (OIP) and by Weapons Inspectors

The staff of the OIP receives applications and scrutinizes them for their completeness. Some applications might be declared 'null and void' during processing,

before their circulation to the Iraqi sanctions committee. Applications that are blocked are considered 'null and void.' This can be for purely technical reasons such as duplication, or at the request of either of the parties to the related contract. Moreover, incomplete applications are not circulated to the Iraqi sanctions committee.

Applications that are submitted incomplete, contain errors, or are non-compliant with either the Distribution Plan or the procedures established by the Committee are deemed to be unacceptable for circulation to the Committee...These applications will be returned to the applicant mission without registration under a Comm. number.¹⁴¹

According to the OIP, a complete application includes a form for the Iraqi sanctions committee, a contract, and any further and additional information requested by the Iraqi sanctions committee. A contract is identified as a legally binding, written bilateral agreement between an entity of the Government of Iraq and a foreign supplier to purchase goods and/or services. It includes information on the type, quality, quantity, price, and shipping routes of the goods.¹⁴²

The OIP has also the authority to approve items based on a list previously approved by the Iraqi sanctions committee under a 'fast track' procedure. All fast track applications continue to be circulated to the Iraqi sanctions committee for approval, only if they contain any items not on the approved list, including spare parts or consumables not specifically mentioned in the list. These applications are also circulated to the weapons inspectors for their assessment. The OIP determines, based on criteria set out in resolution 1282 (1999), which applications are eligible for clearance under fast track procedures. The list of fast track procedures was first implemented for food and educational supplies in February 2000. Two additional lists were approved in March

¹⁴⁰ United Nations, Office of the Iraq Program, "Implementation of Oil-for-Food: A Chronology." 5/26/2001.

¹⁴¹ Ibid.

2000 for pharmaceuticals, medical supplies and basic medical equipment, and basic agricultural equipment and supplies. The health sector list was expanded significantly on 1 September 2000 and led to further enlargements in 2001.¹⁴³ A list of oil spare parts (Phase VII) became eligible for fast track procedures in July 2000 and a project-based list for oil spare parts and equipment for Phase VII was further approved on 1 December 2000. Items in the electricity sector were approved for fast track processing in May 2001.

After applications are scrutinized by the OIP, they are forwarded to and screened by UN customs and weapons inspectors. Originally, the staff of UNSCOM/UNMOVIC and the IAEA screened the contracts for weapons and related dual-use items in accordance with the export/import control mechanism established pursuant to provisions of resolution 1051 (1996). The procedures of the import/export mechanism and the development of the '1051 list' were based on the assumption that Iraq would use all potential dual-use items for military purposes. In accordance with resolution 1284 (1999) and 1330 (2000), the '1051 list' was slightly revised and updated in 2000.¹⁴⁴ This led to some decreases in the number of applications placed on hold. According to the Secretary General, some "...applications that were on hold because they were deemed "dual use" are no longer so classified, and so were released from holds."¹⁴⁵ Based on the dual-use list, Iraq's ability to import goods is restricted before it has been proven that Iraq has used

¹⁴² United Nations, Office of the Iraq Program, *Glossary*.

¹⁴³ Ibid.

¹⁴⁴ United Nations Security Council, *Letter Dated 6 June 2001 from the Executive Chairman of the United Nations Monitoring and Verification and Inspection Commission addressed to the president of the Security Council*, S/2001/560, 6 June 2001.

¹⁴⁵ United Nations, *Report of the Secretary General*, Phase X-150-day report, S/2001/1089, 19 November 2001, para.22.

the goods for military purposes. The export/import mechanism is therefore highly controversial.

2. Final Decision Making Process of the Iraqi Sanctions Committee

Until recently (May 2002), applications for items entering Iraq were scrutinized in their last stage by the Iraqi sanctions committee. Any of the 15 delegates on the Iraqi sanctions committee has the authority to approve, block or place applications for the delivery of items to Iraq on hold. Applications under consideration by the Iraqi sanctions committee are in the 'pending period.' The pending period was initially not restricted. In an effort to speed up the decision making process, resolution 1284 (1999) restricted the pending period to two working days.¹⁴⁶

An application is approved if the Iraqi sanctions committee does not have any objections to it. Approved applications are limited to a validity period of 180 days. An additional period of 180 days may be approved. Further extensions are approved only on an exceptional basis. For oil applications, approval letters are issued on the basis of an irrevocable Letter of Credit for oil shipments and confirmation of the lifting of oil cargoes. These Letters of Credit refer to the banking mechanism by which suppliers get paid. Letters of Credit are agreed on between the entities of the Government of Iraq and their suppliers. They must meet certain standards and are monitored by the United Nations Treasury. They are irrevocable. Once they have been issued, a supplier is guaranteed payment if the contractual obligations are met. The United Nations independent inspection agents authenticate contractual obligations.¹⁴⁷

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

For humanitarian applications, the approval process is based on the 'sector' in which the contracts fall. For foodstuffs, medicines and health supplies, in general the Iraqi sanctions committee decides on applications under its 'no-objection' procedure within two business days in most cases. The two business days count from the circulation of the application by the OIP to the Iraqi committee. For other materials and supplies for essential civilian needs, applications are approved under the Iraqi committee's no-objection procedure within seven days. In theory no-objection procedures should allow for the speedy approval of food, medicine and other essential humanitarian goods with seven days.

In the specific case of spare parts and essential equipment for the safe operation of oil pipelines, decisions on contracts are made under the no-objection clause, but on a case by case basis. In these cases, the Iraqi sanctions committee may request relevant UN personnel in Iraq to verify that the equipment exported to Iraq is used only for the purposes permitted.¹⁴⁸

If the Iraqi sanctions committee decides that applications cannot be approved, they are blocked. Blocked applications cannot be resubmitted and are considered 'null and void'. Members of the Iraqi sanctions committee can also delay the approval of an application by placing applications on hold. Only the Iraqi sanctions committee member that has placed the hold in the first place can release the application from its hold status.¹⁴⁹

Applications are placed on hold primarily due to two main concerns. First, many applications are placed on hold for reasons of inappropriately presented contracts.

¹⁴⁸ United Nations, Office of the Iraq Program, "Procedures Established by the 661...", p.5/5.

¹⁴⁹ United Nations, Office of the Iraq Program, *Glossary*.

Second, applications for items that are of 'dual-use' nature often require additional information and are, therefore, placed on hold. To free contracts from the hold status, suppliers are asked to provide clarifications and/or additional information on contracts.

Concerns regarding the high number of holds placed on applications were voiced throughout all phases of the OFF program. These ongoing concerns were based on the observations that no decrease in the number of holds placed on applications was detected even though various adjustments in the process of application approval were made. In many cases, holds were not released even after additional information was presented to the Iraqi sanctions committee on these items. According to Sevan,

...there has been a surge in the number and value of applications on hold despite the fact that the information requested by the holding mission(s) had been provided for more than 60 days. In most cases feedback from the holding mission(s) is lacking.¹⁵⁰

Moreover, Sevan notes that contracts placed on hold were often for items such as computers, which "...are readily available in the markets and shops of Baghdad, as well as elsewhere in Iraq."¹⁵¹

To speed up the process of application review, changes were implemented. Pre-screening procedures allowed for the screening of applications by the OIP *prior* to circulation to the Iraqi sanctions committee for its consideration.¹⁵² This allowed the organization of applications in accordance with their importance rather than by the date they were received. In addition, 'no objection' procedures were implemented which allowed the automatic approval of applications in the absence of complaints, after a

¹⁵⁰ United Nations Office of the Iraq Program, *Statement by Benon V. Sevan*...26 February, 2002.

¹⁵¹ Ibid.

¹⁵² United Nations Security Council, *Report of the Secretary General*, S/1997/419, part I, para 2.

certain deadline.¹⁵³ Moreover, 'green lists' of items that had been pre-approved by the Iraqi sanctions committee were designed to further speed up the approval of applications. Resolution 1284 (1999) directed the Iraqi sanctions committee to approve lists of goods, including foodstuffs, standard health, agriculture and education supplies, that would not require submission to the Iraqi sanctions committee for approval. Applications for items on these lists would be sent directly to the Secretary General after they were cleared and 'notified' by the staff of the OIP.¹⁵⁴ The 'notification' of applications refers to the approval of an application by the Secretariat without the circulation to the Iraqi committee.

Applications placed on holds are organized into two categories. Active holds are considered contracts for which there is no feedback from the Iraqi sanctions committee member in more than 60 days, despite the provision of additional information by suppliers. For applications that are considered 'inactive holds', suppliers have not provided the additional technical information requested by the Iraqi sanctions committee in over 60 days.¹⁵⁵ The following figure illustrates the process of the OFF applications mechanism before May 2002.

¹⁵³ H.P. Kaul, "Die Sanktionsausschüsse des Sicherheitsrates, p.100.

¹⁵⁴ United Nations Office of the Iraq Program, "Accelerated ("fast Track") procedures for the approval of contracts for specified humanitarian supplies for Iraq," OIP-home page.(September 2001)

¹⁵⁵ Figures by May 2002

Figure 1. Procedures of the OFF-Applications Process before May 2002

THE GOVERNMENT OF IRAQ

EXPORT: Companies issue applications for a UN letter of approval to export goods into Iraq.

IRAQ: Iraq issues tender

EXPORT: Permanent Mission of State to the UN initiates process on behalf of the company

IRAQ: negotiates and accepts bids from suppliers and signs contracts.

Humanitarian and Oil Contracts are submitted to the UN

THE UNITED NATIONS

Office of the Iraq Program reviews contracts

Weapons Inspectors: UNSCOM and UNMOVIC

Applications are 'Null and Void'

Applications cleared under 'No Objection'

Applications are cleared under 'Fast Track' or Accelerated Procedures

Applications containing dual-use items

Applications are 'notified' to Secretary General

Approval letter signed by Executive Director of OIP

THE IRAQI SANCTIONS COMMITTEE

Approved Contracts

Blocked Contracts

Contract Placed on Hold

Companies submit export license to relevant national departments

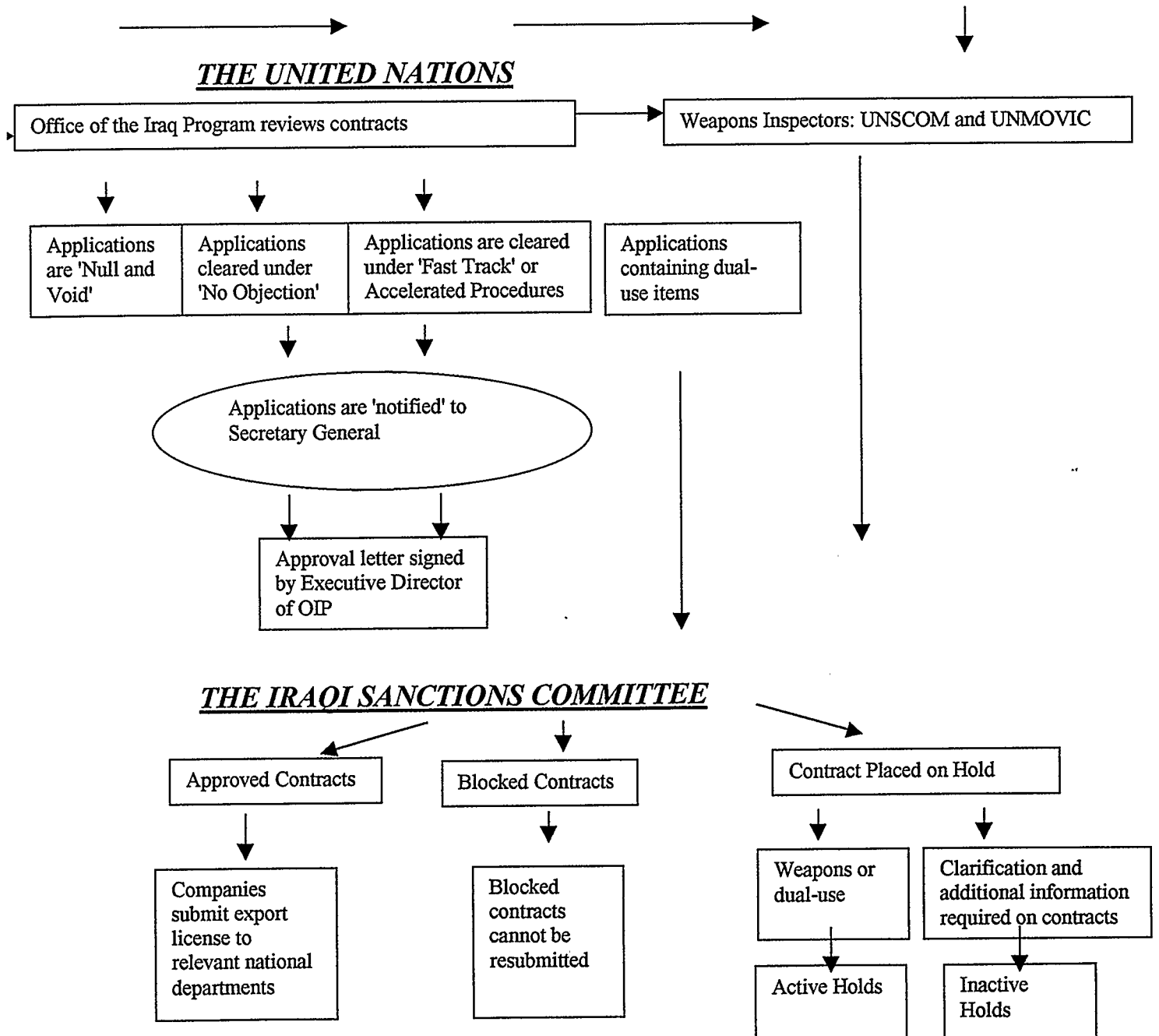
Blocked contracts cannot be resubmitted

Weapons or dual-use

Active Holds

Clarification and additional information required on contracts

Inactive Holds



Stage IV: Goods Arrival, Transportation and Distribution

Commodities enter Iraq from Trebil in the province of Anbar on the border with Jordan and from Al-Waleed on the border with Syria, from Habur/Zakho in the province of Dohuk, on the border with Turkey and at the port of Umm Qasr through the province of Basrah in southern Iraq, on the Persian Gulf. Most recently, a fifth border crossing, Ar'ar, has been opened on the border with Saudi Arabia.¹⁵⁶

In accordance with paragraph 8(a) (iii) of resolution 986 (1995) initially 32 independent UN inspection agents were stationed at these relevant entry points and other locations in Iraq to confirm the arrival of commodities: 10 at the port of Umm Quasr, 11 at the Turkish border (Zakho/Faida), and 11 at the Jordanian border (Trebil).¹⁵⁷

The inspection agents ensure that all goods received are in agreement with the defined requirements and “possess a value in accordance with internationally accepted trade practice and are of declared quality and quantity.”¹⁵⁸ The number of inspectors was increased to 54 in Phase VI.¹⁵⁹

UN personnel are allowed to check goods that are authorized under OFF. They verify that the goods conform to the contract that was approved by the UN. Under the provisions of resolution 986 (1995), OFF personnel have no authority to check any items that might enter Iraq outside of the OFF. The responsibility for preventing exports to Iraq that have not been authorized under the UN program remains with individual states, including the states bordering Iraq.¹⁶⁰

¹⁵⁶ United Nations Office of the Iraq Program, *Chronology*.

¹⁵⁷ United Nations Security Council, *Security Council Resolution 986* (1995), para. 8 (a) (iii) and para. 36 and *Memorandum of Understanding*, 20 May 1996, para. 26.

¹⁵⁸ United Nations Security Council, *Report of the Secretary General*, S/1997/419.

¹⁵⁹ United Nations Security Council, *Report of the Secretary General*, S/1998/23 para. 13 and 23-24.

¹⁶⁰ US-GAO report, *Comments from the Department of State*, Appendix IV, p.42.

Only items that arrive in Iraq are confirmed by UN independent inspection agents and are eligible for payment from the Iraq Account. The UN inspection agents add their authenticated confirmation of arrival to a copy of the Iraqi sanctions committee's letter stating that the exporter is eligible for payment from the UN Iraq account.¹⁶¹ Once the Iraqi sanctions committee has informed parties concerned that the exporter is eligible for payment from the Iraq Account, the Central Bank of Iraq must request the bank holding the Iraq Account to open an irrevocable and non-transferable Letter of Credit in favour of the supplier. The only reason why trucks carrying supplies purchased under the OFF stop at the border gate is to allow the UN independent inspection agents stationed there to confirm the arrival of goods. If the trucks would not stop for inspection, the suppliers would not get paid.

Once goods arrive in Iraq, the Government of Iraq is responsible for their transportation to various warehouses. The Iraqi Government remains responsible for the delivery of goods from the south/centre to the warehouses in the north. All warehouses in which goods are stored are government-owned and are located throughout the governorates.¹⁶² The transportation of goods to the warehouses is undertaken by private companies. Some of the warehouses are allocated for OFF program items only. The Government of Iraq has, however, storage facilities, which are not used for OFF program items.¹⁶³ The Government of Iraq also has its own stocks. In the case of shortages the government uses its own stocks to make up for deficits experienced under the OFF.¹⁶⁴ Reception centres dispatch trucks which deliver goods between governorates in

¹⁶¹ United Nations Office of the Iraq program, *Procedures Established by the Iraqi Sanctions Committee 661 for the Oil-for-Food program*, p.3/7.

¹⁶² United Nations Security Council, *Report of the Secretary General*, S/1996/978 para.17.

¹⁶³ Save the Children (UK), *Iraq Briefing Memo Summary of Recent Data on Humanitarian Conditions in Iraq*, Gerard Mc Hugh - Consultant, Save the Children (UK) 18 October 2002 G/SC/ISA/1002-5

proportion to their population. Reception centres and exchange centres produce daily distribution plans indicating the amounts dispatched to each governorate. Some commodities are also collected in the warehouses by the retail agents.¹⁶⁵

The onward distribution of food items to the population in the centre and the south of Iraq is the responsibility of the Government of Iraq. In this area the UN only observes to ensure that there is distribution of supplies received under the OFF program. The UN has no role in how the Iraqi government manages its own distribution system.¹⁶⁶

To ensure distribution of monthly rations, a ration card system was implemented by the Government of Iraq that covers one calendar year. This ration system was implemented originally with the implementation of sanctions in Iraq in 1990. "In principle all beneficiaries should receive identical quantities of rationable commodities, with the exception of children under one year..."¹⁶⁷ Each ration card has a number of coupons that correspond to the basic food items involved in the system. The coupons are collected from the households monthly by the retail rations agents. Retail agents present coupons that they receive from the population to the local distribution centres to receive the following month's stock. Households are informed of their rations through public and private mass media. Information, entitlements and locations of the various distribution centres are publicized. The population pays a fee of 105 Iraqi dinars towards the transport and administrative costs of goods.¹⁶⁸ Apparently, the Government of Iraq has implemented a follow-up mechanism to ensure the effective and proper implementation of the rationing system. Accordingly, staff of monitoring offices of the Ministry of Trade

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

¹⁶⁶ United Nations Office of the Iraq Program, *Statement by Benon V. Sevan to the Security Council on 4 September 1998*, 4 September 1998.

¹⁶⁷ Ibid.

and citizens are responsible to ensure the effectiveness of the system. According to OIP reports, complaints can be submitted to the Ministry of Trade against a retail ration agent. Agency licenses are revoked if 51% of all registered households in the district condemn the agent.¹⁶⁹

The distribution mechanism implemented by the Government of Iraq has been hailed as 'second to none' by UN Humanitarian Coordinator Myat in October 2000. A recent report by Save the Children (UK) on the Kurdish humanitarian situation in the north explains

the fact is that if the ration were not in operation, then prices would be much higher than the current ones (as witnessed in the early 1990s.) In a market without the suppressed prices due to the ration, the ability to buy food would be vastly reduced with the current levels of income. This would especially affect the urban populations, who have no access to their own production and therefore source of food. The other issue is that the cost per month of \$20 only includes the basic food commodities in the ration. It does not include the irregular provision of lentils and chickpeas, which are important for protein levels in the diet. It also fails to take into account the non-food items, which are at present given free or highly subsidized; these include soap and detergent as well as kerosene and gas. So the value of the 'livelihood' basket as a whole is actually well over \$20 per month per household even at current prices.¹⁷⁰

Stage V: UN Observation Mechanism

The implementation of the OFF program in the northern part of Iraq rests with the United Nations departments, because of the ongoing political struggles and the oppression of the Kurdish population by the Government of Iraq. As mentioned before, the Humanitarian Coordinator in Iraq, appointed by the Secretary General, is responsible for the management of the OFF program in the north of the country. Estimation of food needs, storage, handling, internal transportation, distribution, and confirmation of

¹⁶⁸ Ibid., para 18.

¹⁶⁹ Ibid., p.10, para.32.

¹⁷⁰ Ibid.

equitable distribution for the north are the general responsibilities of the northern OFF program.¹⁷¹ The management of food distribution is also under the direct control of the UN departments.¹⁷²

The management and coordination of the program are facilitated by three interrelated units or agencies: the Sectoral agencies, the Geographical Observation Unit (GOU) and the Multidisciplinary Observation Unit (MDOU). At the national level, the Sectoral agencies are responsible for the distribution of commodities imported under the various sectors of the OFF program. Sectoral observers provide analysis and assessments of the effectiveness of the distribution systems relating to their sectors. The UN sectoral groups also work closely with their Iraqi Governmental counterparts. Assessments are then forwarded to the Iraqi sanctions committee members. It is also the sectoral observers who provide information on the humanitarian effects of applications placed on hold by the Iraqi sanctions committee.¹⁷³

Under Security Council Resolution 986 the different UN departments have 'dual roles' in Iraq. For the south/centre, the UN departments are authorized to 'observe' only the implementation of the OFF program with the objective of ensuring the equitable distribution of commodities imported to Iraq. In the north of Iraq, UN departments observe and implement the OFF program. UN departments work closely with local authorities on the implementation of the OFF in the north of Iraq.¹⁷⁴ In the food sector, international observers from the World Food Program (WFP) observe and track commodities at the warehouse level. WFP observers visit warehouses and silos weekly

¹⁷¹ United Nations Security Council, *Memorandum of Understanding*, Annex 1, May 20 1996.

¹⁷² United Nations, *Report of the Secretary General*, S/1996/978, para 20.

¹⁷³ United Nations Office of the Iraq program, *Statement by Benon V. Sevan Executive Director of the Office of the Iraq Program at the informal Consultations of the Security Council Tuesday, February 2002*, New York, February 2002.

or on a monthly basis. In the health sector, the World Health Organization (WHO) is responsible for the overall effectiveness and analysis of the health services available. Specifically, it is the responsibility of the WHO to distribute drugs and to oversee the quality of drug management.¹⁷⁵ The overall responsibility for the observation of the water and sanitation sector is under the authority of the United Nations Children's Fund (UNICEF). UNICEF conducts surveys and assessment plans to identify all needs in this sector. In the electricity sector, the United Nations Development Program (UNDP), in collaboration with international observers and national assistants, covers all governorates of Iraq.¹⁷⁶ Observation in the education sector is the responsibility of the United Nations Educational, Scientific and Cultural Organization (UNESCO).

The second tier of the observation mechanism is the Geographical Observation Unit (GOU). The GOU collects relevant information concerning the delivery, storage and distribution of commodities at the governorate levels for all sectors. Geographical observers also implement specific steps to confirm the arrival of supplies to end-users. The GOU works closely with the related ministries of the Government of Iraq and uses data provided by the ministries and from several other sources for its assessments. As much as possible this data is verified further through interviews with end-users, which include households and distribution agents. In addition, random surveys, spot checks, and market surveys are employed to verify information.¹⁷⁷ The GOU

...assesses the extent of transportation problems, the extent and effectiveness of the cold chain, the timeliness of arrivals, the quality control process for selected

¹⁷⁴ United Nations, World Health Organization, *WHO's Humanitarian activities in Iraq under SCR 986*, August 1998. Part 2.

¹⁷⁵ *Ibid.*, para. 18.

¹⁷⁶ *Ibid.*, para. 22.

¹⁷⁷ United Nations Security Council, *Report of Secretary General*, S/1996/978 para.27

items, distribution to governorate warehouses and end-user facilities, and the efficiency of distribution to private pharmacies.¹⁷⁸

The third level of the program is the Multidisciplinary Observation Unit (MDOU). The MDOU has three principal functions. The first function is to increase the range of expertise available to the observation mechanism in Iraq. It is responsible for bringing together international experts in the specific areas of food, public health, pharmaceuticals, hospital equipment, water/sanitation/chemicals, agricultural inputs and machinery, animal health, plant protection, education and electricity. The second function is to maintain a tracking system for all supplies imported under the OFF program. The MDOU also utilizes data collected by the GOU and other UN agencies to track commodities from their arrival in Iraq through to their final distribution. The third function is to report, analyze, conclude and recommend directly to the UNCHA.

With the growth of the OFF program, the observation mechanism shifted from the distribution of food and basic medicines to observing inputs relating to infrastructure rehabilitation. The observation of infrastructure items focused on confirmation that supplies were used for their intended purposes and were delivered to predefined destinations.¹⁷⁹ As at February 2002, the total number of UN staff in Iraq including international and national personnel was 3886. The total number of national staff was

¹⁷⁸ Ibid.

¹⁷⁹ United Nations Security Council, *Memorandum of Understanding*, 20 May 1996, para. 41.

3,051. The total number of personnel in the centre/south was 1233. The total number of staff for the north was 2653.¹⁸⁰

Summary and Conclusion

As the above chapter has shown, the program is in its totality dependant on Iraq's oil production and revenue generation under the OFF. Administrative costs for all UN departments are covered by revenue generated by Iraqi oil exports. As such the program does not constitute an 'aid' program. Moreover, all of the revenue generated under the OFF, processes of applications, the screening and monitoring of items under OFF are UN-controlled. As the overview shows further, screening and monitoring procedures implemented are complex and dependent on many actors and influences. The OFF program draws on large numbers of staff. In addition, the revenue generation and the approval process for items are influenced by political actors and their interests. In the absence of clearly defined rules improvements are dependent on the 'good will' of political actors.

¹⁸⁰ United Nations office of the Iraq Program, *Statement by Benon V. Sevan Executive Director of the Office of the Iraq Program at the informal Consultations of the Security Council Tuesday, February 2002, Delays in the Visas for Program Staff*.

Chapter IV: The Key Problem Areas of the OFF program

The following chapter outlines the main factors that have negatively affected the OFF program. The dependence of the program, on the international oil market, on the interests of political actors, sanctions busting, and corruption, have had major influences on the funding availability for the OFF program. Some main insufficiencies in the physical design of the OFF program are also highlighted, including the lack of a cash component for local labour, delays in contracting procedures, and the funds allocated to the Compensation Fund. Moreover, procedural and organizational problems are highlighted. According to the Secretary General, these are "over and above the issue of the availability of financial resources."¹⁸¹ The analysis begins with a concentration on reasons leading to the present revenue shortfall and develops this further to outline other problematic areas in the implementation of the OFF program.

A. OFF Funding

1. Dependence on the International Oil Market

The OFF has always been dependent on the international oil market. Volatile oil market prices lead to changes in the total revenue available throughout all stages of the Program. As mentioned before, in Phase I the average price per oil barrel was relatively high, \$17.99, and in Phase II \$16.74. The oil export ceilings implemented by the UN Security Council limited Iraq's total revenue generation through the OFF program to \$2 billion for each 180-day phase. Iraq was therefore not able to take advantage of the relative high price of oil at this time. It is however, important to highlight that only the export of oil by Iraq under the OFF program was limited by the Security Council, not the

¹⁸¹ United Nations, *Secretary General Report Pursuant to paragraph 7 of resolution 1143 (1997)*, S/1998/90, New York, 1 February 1998, para.9.

production of Iraqi oil. While the Security Council was able to limit oil exports under the OFF, it has no way to limit Iraq's oil production for domestic and other uses. The cost of oil began to collapse in Phase III to \$12.18 per barrel. "Compared to the first half of Phase I...the 32 per cent decline in the price of oil per barrel in Phase III [meant] that Iraq would have [had] to export..." approximately an additional 30 million barrels to raise comparable revenue.¹⁸² The oil export ceiling was raised for Phase VI and V to \$5.2 billion to allow Iraq to sell more oil. The price of oil continued to collapse and hit an all-time low of \$7 to \$8 per barrel. Security Council resolution 1266 of 4 October 1999, allowed Iraq to export an additional amount of \$3.04 billion of oil in Phase VI to make up for the deficit experienced in revenue in Phases IV and V because of the low oil prices. It was not until mid-1999 onward that Iraq was able to raise total oil export revenue when the price of oil rose to \$20.06 - \$26.87 per barrel. This was only possible, however, because the Security Council lifted completely the ceiling on Iraqi oil exports under the OFF program through resolution 1284. In Phase VIII, Iraq experienced the highest volume of oil exports, which was over \$9.5 billion, under the OFF. Surprisingly, this coincided with the development of the revenue shortfall, which began only after Phase VIII. The revenue shortfall caused by the volatile oil market was also aggravated further by several other influences. Since Phase VIII the program has been accumulating a revenue shortfall.

As a result of a revenue shortfall ...currently 1,552 approved humanitarian supply contracts, worth about \$3.08 billion, are without funds and therefore cannot be delivered to Iraq. The sectors affected by the revenue shortfall are: electricity with \$640 million; agriculture with \$541 million; food handling with \$510 million; health with \$315 million; housing with \$309 million; water and sanitation

¹⁸² United Nations Security Council, *Report of Secretary General*, S/1998/194, 4 March 1998, Part II, para.4.

with \$284 million; telecommunications and transportation with \$241 million; education with \$236 million.¹⁸³

2. Delays and Suspensions by the Government of Iraq under the OFF Program

The decline of the total revenue available for the OFF program is further exacerbated by the periodic delays and suspension of Iraq's oil exports under the OFF program. Any delays or suspensions of oil exports translates into less oil exported under the OFF program, leading to less revenue availability. According to OIP staff, even when Iraq suspends its oil exports under the OFF program, it still continues with its oil production, for domestic consumption and other activities.

The first suspension of oil exports under the program took place only five months after commodities had entered Iraq under OFF in March 1997. The delay began on June 8, 1997 and lasted until August 14, 1997. Iraq suspended oil exports under the OFF until the Secretary General officially approved the Distribution Plan for Phase II on August 4, 1997. According to the OIP, "the two-month delay in the pumping of oil created a potential shortfall in revenues, estimated at \$500 million."¹⁸⁴ Security Council Resolution 1129 (1997) was adopted to grant Iraq an additional 30 day period to sell oil in order to reach the target of \$1 billion for the first half of Phase II.¹⁸⁵ Iraq was able to recover the losses and meet its export limit by the end of Phase II.¹⁸⁶ According to the OIP,

The decision by the Government of Iraq to suspend the sale of oil, pending the approval of the new distribution plan, is expected to result in a significant

¹⁸³ United Nations, *Weekly Update for the week of October 19-25*, New York, October 29, 2002.

¹⁸⁴ United Nations Security Council, *Report of the Secretary General Pursuant to Paragraph 3 of Resolution 1111 (1997)*, S/1997/685*, 8 September 1997, para. 5.

¹⁸⁵ United Nations Security Council, *Security Council Resolution 1129 (1997)*, S/RES/1129, New York, 12 September 1997.

¹⁸⁶ United Nations Security Council, *Report of the Secretary General Pursuant to Paragraph 3 of Resolution 1111 (1997)*, S/1997/935, 28 November 1997, para. 5.

shortfall of funds since the target of 1 billion worth of oil sales cannot be met within the first 90 days. In view of these adverse consequences for the humanitarian program and the United Nations capacity to carry out its observation and implementation responsibilities, the Council may wish to consider an appropriate mechanism for the shortfall to be met. Should there be a further renewal of the Program, the government and all concerned parties should ensure that no similar delays would occur.¹⁸⁷

Iraq suspended oil exports under the OFF again at the start of Phase III (5 December 1997). The Iraqi Government announced that oil under Phase III would not flow until the Distribution Plan was approved by the Secretary General. The Secretary General approved the Distribution Plan on January 5, 1998. Iraq was able to reach its export limits during this phase.¹⁸⁸ However, because of the rapid fall of oil market prices, Iraq nevertheless experienced substantial revenue losses.

It is surprising that oil exports were not suspended on December 16, 1998 in the wake of military action by the United States and the United Kingdom. During the bombing of Iraq, UN independent oil monitors remained on duty. There was also no interruption in the monitoring of oil exports from Ceyhan in Turkey or the loading platform of Mina al-Bakr in Iraq, which is only to be attributed to the determination of the UN workers in Iraq. Unilateral suspensions of oil exports by the Government of Iraq have also taken place since 1998. In 1999, Iraq suspended oil exports under the OFF to demonstrate its objection to the Security Council's decision to extend the OFF program for two weeks as opposed to the regular 180 days.¹⁸⁹ These initial oil export halts under

¹⁸⁷ United Nations Security Council, *Report of the Secretary General Pursuant to Paragraph 3 of Resolution 1111 (1997)*, New York, S/1997/685*, 8 September 1997, Part VIII, para. 55.

¹⁸⁸ Niblock, *Pariah States*..., p.130.

¹⁸⁹ Barbara Crossette, "Iraq Cuts Exports, in Move That Foils Oil-For-Food Plan," *New York Times*, November 23, 1999.

the OFF did not amount to any substantial effects on the availability of revenue for the program.¹⁹⁰

Iraq also, however, discontinued oil exports in December 2000. According to the OIP, this was in reaction to disputes over the oil pricing mechanism for the sale of Iraqi oil. Agreements on the mechanism could not be reached between Iraq's State Oil Marketing Organization and the Iraqi sanctions committee. Oil loadings were suspended at the Mina al-Bakr and Ceyhan oil terminals, and continued to be suspended even though the pricing mechanism for the sale of oil was approved and even though the next phase of the OFF had begun.¹⁹¹ This interruption coincided with Iraq's highest volume of oil exported under the OFF program for the previous Phase VIII. Financial shortfalls were therefore recovered. However, at the beginning of Phase IX, the Iraqi Government delayed the submission of the Distribution Plan for Phase IX by two months. The Secretary General predicted that this would adversely affect the implementation of the program during that phase.¹⁹²

In addition, oil export interruptions under the OFF also took place in the period June 9, 2001 - July 6, 2001, in protest against the Security Council's adoption of resolution 1352 which extended the OFF program for 30 days only, rather than the usual 180 days.¹⁹³ This move was intended to allow more time for persuasion of the Security Council by the US and Britain for their 'smart sanctions' proposal against Iraq. During this period Iraq's average crude oil price was estimated at \$23.09 per barrel.¹⁹⁴ During

¹⁹⁰ Niblock, *Pariah States*...., p.130.

¹⁹¹ United Nations Office of the Iraq program, *Weekly Update for the period of 2 -8 December 5, 2000*, New York, 12 December, 2000.

¹⁹² United Nations Security Council, *Report of the Secretary General pursuant to Paragraph 5 of resolution 1330 (2000)*, S/2001/186, New York, 2 March 2001, para.29.

¹⁹³ BBC News, "Iraq cuts oil exports," 4 June, 2001.

¹⁹⁴ United Nations Office of the Iraq Program, *Weekly Update*, 9-15 June 2001, New York, 19 June 2001

this period Iraq also had \$2.2 billion of unencumbered funds available in the Iraq account. It is reasonable to conclude that without the suspension Iraq could have had even a greater amount available for the OFF.

Most recently, oil exports were interrupted from April 8, 2002 to May 9, 2002. This was motivated, according to Iraqi news agencies, by Iraq's support for the Palestinian cause. As a symbol of protest against the Israeli government and its supporters, Iraq interrupted oil exports under the OFF for a period of one month.¹⁹⁵ According to the OIP, this led to \$1.2 billion in lost revenue for the OFF-program.¹⁹⁶

3. Oil Smuggling and the Lack of Efficient Implementation of Sanctions by the International Community of States

Oil exports under the OFF further decline due to oil smuggling outside of the program. Iraq is paid directly either in cash or barter for smuggled oil. The revenue generated from these sales is not deposited into the UN Iraq account and is therefore not subject to any resolutions passed by the United Nations.¹⁹⁷ It is assumed that Iraq has been involved in oil and goods smuggling since 1991. The Multilateral Maritime Inspections Force (MIF) was established in 1991 to monitor and intercept shipments to Iraq by sea in an effort to limit smuggling of oil and goods.¹⁹⁸ According to reports, the MIF was also involved in dockside inspections. In this role, the MIF was replaced by Lloyd's Register in 1994.¹⁹⁹ Lloyd's Register's inspections came to an end in December 2000. According to a recent report, there are at least nine routes by which Iraq exports oil outside of the UN's OFF system.

¹⁹⁵ Arabic News, "Iraq stops oil exports, decision against Israel and the USA" *Iraq-Regional*, Politics, 4/8/2002, available at: www.arabicnews.com.

¹⁹⁶ United Nations office of the Iraq Program, *Statement by Benon Sevan Wednesday September 25, 2002*. New York, 25 September, 2002. p.3.

¹⁹⁷ Ibid. p.27

¹⁹⁸ United Nations Security Council, *Security Council Resolution 665 (1990)*, <http://www.fas.org/newsun/iraq/sres/sres0665.htm>.

These are by truck to Turkey, Jordan, Syria and Iran; by barge through Iranian and Kuwaiti territorial waters, by topping up Oil-for-Food - authorized tankers at Mina al-Bakr and most recently, *via* pipeline and railway to Syria.²⁰⁰

In a briefing by the Security Council in 1997 on the status of smuggling the Vice Admiral Thomas B. Fargo of the MIF, Coordinator of the MIF, stated his major concern over the growing "emerging pattern of sanctions violations by a number of ships which are smuggling gas and oil from Iraq."²⁰¹ Smuggling has expanded to include countries that are not direct neighbours of Iraq. Most recently a highly publicized case of oil smuggling involved a Dutch oil trading firm, Trafigura. Trafigura chartered a Liberian-flagged tanker, the *Essex*. According to reports, "the *Essex* was caught having topped up with an extra 270,000 barrels *after* UN inspectors had approved its load of 1.8 million barrels at Mina al-bakr."²⁰² According to a report of September 2002,

the lax enforcement resulting from the international community's important but ancillary concerns regarding Iraq's neighbors has enabled Saddam to use the UN program to further consolidate his grip on power, thereby jeopardizing any effort to bring down his government. Not only has Saddam been able to extort sympathetic diplomatic postures from Security Council members eager to do business in Iraq, thereby strengthening his prestige in the Arab world and his position internationally; he has also exploited the UN program to solidify his domestic control over the Iraqi people. Because he and his sons control the distribution of the civilian goods imported through Oil-for-Food, ordinary Iraqis must now depend on the regime even for basic goods formerly available in the marketplace.²⁰³

¹⁹⁹ Cortright and Lopez, *Sanctions and Security*..., p.165.

²⁰⁰ Coalition for International Justice, *Report*, p. 27.

²⁰¹ United Nations, *Press Release, Iraq 661 Committee Hears Presentation by Coordinator of Multinational Interception Force*, 5 Feb. 1997, SC/6322IK/214.

²⁰² Coalition for International Justice, *Report*, p. 44.

²⁰³ *Ibid.*, p.6.

The United States General Accounting Office (GAO) has presented estimates of the revenue generated outside of the OFF system during 1991-1997 and 1997-2001. According to this report, as much as 480,000 barrels of oil were being smuggled daily:

...we conservatively estimate that Iraq has illegally earned at least \$6.6 billion since 1997 - \$4.3 from smuggling and \$2.3 billion in illegal surcharges on oil and commissions from its commodity contracts.²⁰⁴

According to a Coalition of Justice Report from September 2002, the illicit trade by Iraq with neighbouring countries is "...bpqfj qba ql mrjm ilpb ql fiiflk alii op vb o) lo e ic lc ii fiif fq obsbkrb) afob qiv fkql aa j p lccbop ²⁰⁵ However, reliable data on the revenue generated by oil smuggling and the smuggling of goods is hard to come by. Also, the exact amount of oil exports and illegal revenue generated outside of the OFF is unknown.

The United States and the United Kingdom spearheaded a 'smart sanctions' campaign in 2001 with the objective to engage Iraq's neighbours to implement tighter border controls. These efforts cumulated in the adoption of resolution 1409 (2002).²⁰⁶ Iraq's neighbours had lost vast amounts of trade with Iraq due to the sanctions implemented. Moreover Iraq's neighbours were not compensated significantly for any of their losses. At the same time the US and UK had ignored previous evidence of smuggling to neighbouring states for a variety of political reasons. The report states further

The United States and United Kingdom, by far the hardest-nosed about enforcing the sanctions regime, nevertheless have been sensitive to the complaints of their close regional ally, Turkey, which claims to have suffered severe economic damage from a decade of sanctions and whose impoverished and rebel-ridden southeast

²⁰⁴ US-GAO, p.7.

²⁰⁵ *Coalition of Justice Report*, September 18, 2002, p.5/70.

²⁰⁶ CASI, "CASI disappointed at 'mirage' of smart sanctions," Press Release, Wednesday, 15th May, 2002, <http://www.cam.ac.uk/societies/casi/briefing/prscr1409.pdf>.

enjoyed a boost from the illicit, \$300m diesel trade until its shutdown earlier this year. The diesel trade has been tolerated by the US and UK in part for this reason, in part because it has been brokered by and has handsomely benefited the Iraqi Kurds. It has now been replaced by a significant increase in official, government-to-government trade in crude oil, which also benefits deeply indebted Turkey and has likely been allowed to continue for this reason –despite the fact that Baghdad nets far more from this trade than does Ankara. In the case of Syria, whose business ties with Iraq are burgeoning, the US recognizes that cooperation is critical to success in the war against terrorism and has therefore been reluctant to demand that President Bashar Assad make good on his year-old promise that he would crack down on his country's illicit trade with Baghdad. Instead, Syria has continued to expand its trade and transport arrangements along with the increasing volume of oil moved through the pipeline. These include moving Iraqi oil to Lebanon and, in return, facilitating the transshipment through Syria of Lebanese goods.²⁰⁷

Iraq's neighbours did not want the Security Council to enforce stricter border controls with Iraq. At the same time, the Iraqi Government also strongly opposed stronger border control. However, tighter border controls enforced by the international community could have increased the income available under the UN's humanitarian OFF program.

4. 'Kickbacks', Premium and Method of Retroactive Pricing of Iraqi Oil by the Iraqi Sanctions Committee

The Government of Iraq had developed an oil 'discount - surcharge scheme' that would allow it to levy surcharges on oil. Initially, oil was sold at a discounted rate to favorite trade partners such as Russia. A surcharge was then levied on the oil that was roughly equal to the amount of the discount, about 25-50 cents. This enabled Iraq to obtain hard currency not controlled by the OFF. However, many of the oil companies decided to look elsewhere for oil, uncomfortable with the surcharges and the open

²⁰⁷ Coalition of Justice, Report September 2002, p.5.

circumvention of the UN sanctions regime. By 2001 Iraq's oil sales began to plummet and the Government of Iraq reduced surcharges in an effort to lure back the traders.

The surcharges scheme developed into a major significant dispute on the UN Security Council, pitting Russia, Iraq's closest ally, against the US and the UK, which wanted to cut off the flow of illegal revenue to Iraq.²⁰⁸ The UN reacted late when it announced in 2002 that retroactive oil pricing was implemented on Iraq's oil "to prevent Iraq from taking advantage of fluctuations in the oil market to impose an illegal surcharge."²⁰⁹ Initially, buyers of Iraq's oil knew in advance and at the beginning of each month at what price they would be purchasing Iraq's oil. With the introduction of the retroactive pricing buyers were not informed until the end of each month what price they would end up paying for Iraqi oil. While it is possible that this procedure might have helped to minimize the oil surcharges, Russia blames the new pricing system for the large drop in oil exports under the OFF, leading to large revenue losses for the program.²¹⁰ According to the OIP, "the resulting revenue shortfall has left some \$2.4 billion worth of humanitarian goods ordered by Iraq under funded..."²¹¹

Revenue generation under the OFF is also directly influenced by the trading partners to whom the Government of Iraq chooses to sell its oil. According to the Coalition for International Justice, the vast bulk of oil exports have gone to OECD countries²¹², with the US topping the list of end-consumers.²¹³ Purchases by the US increased from 13 per cent in Phase I to 50 percent of total sales since September 11.

²⁰⁸ Ibid.

²⁰⁹ Author un-known, "Iraq Says it will Drop Surcharges", *The Guardian*, Wednesday August 14, 2002.

²¹⁰ Ibid.

²¹¹ Ibid.

²¹² Thirty member states of the Organization for Economic Co-operation and Development.

²¹³ Report prepared by the Coalition for International Justice, *Sources of Revenue for Saddam & Sons: A primer on the Financial Underpinnings of the Regime in Baghdad*, "Consuming Nations," September 2002, p.16.
http://www.cij.org/pdf/CIJ_Saddam.pdf.

Within Oil-for-Food: The US has long been the most adamant UN Security Council member about prohibiting the flow to Iraq of imports that might be used in weapons production, ... In January, when President Bush designated Iraq a constituent member of his axis of evil, the US consumed 75 percent of all Iraqi oil exported under Oil-for-Food. While no US-based oil firms are currently direct purchasers of Iraqi oil, Saddam's illegal per-barrel surcharges are passed up the line -- from the buyers which are mostly Russian, firms and small "nameplate" companies registered in Western countries, to the major traders; to the American refineries, and, presumably, to the ordinary motorist. This suggests that American companies and consumers are the last links in a chain of enablers who have helped to underwrite Saddam's end run around the UN system.²¹⁴

Other major importers of Iraqi oil include France, Spain, Italy, the Netherlands, Turkey and Japan.²¹⁵ In the first nine phases of the program, the majority of oil contracts were signed directly by the Government of Iraq with large oil companies.

Since the beginning of Phase IX, most western major oil companies have withdrawn from contracting directly with the Government of Iraq after allegations were tabled that members of the Iraqi regime in Baghdad were exacting extensive 'kickbacks' from the oil firms to whom the contracts were awarded. According to a Coalition for International Justice report, kickbacks are defined as,

the payment of a minor portion, usually five to ten percent, of the price of a good by one party in a transaction with another. It is a form of bribery or extortion that is tolerated by the party making the kickback so as to clinch a deal. The recipient is usually a government official in position to either block or facilitate the transaction.²¹⁶

²¹⁴ Ibid., p.6.

²¹⁵ Ibid. p.16.

²¹⁶ Ibid., p.12

is tolerated by the party making the kickback so as to clinch a deal. The recipient is usually a government official in position to either block or facilitate the transaction.²¹⁶

According to the OIP, the profile of contract-holders of Iraqi crude oil now falls within three main categories: refineries, established crude oil traders and middlemen.²¹⁷ Refineries buy Iraqi crude oil with the intention of processing it themselves. Established crude oil traders are companies that purchase and resell crude oil, but do not generally process the oil in their own facilities. These established crude oil traders, however, own substantial wealth that allows them to transport oil to a refinery. Presently, most oil contract holders are identified as middlemen. These are intermediaries who sell the awarded oil contract to oil companies or another buyer. According to the OIP, "they don't seem to add any value to the Program and are just there to earn a risk-free commission at the expense of the United Nations-Iraq account."²¹⁸

Since December 2000, these smaller contract holders of Iraqi crude oil have insisted on 'premiums' on the contracts that they have been awarded as a surplus charge levied to sell the contract to larger companies. "Premium" is the term used to identify the level of profit made by the contract holder when the contract is sold onward to a secondary buyer or end user, i.e. a trading company or a refiner. The premiums asked for are at a level that is considerably higher than the normal commercial practice. In consequence, larger oil companies have simply refused to pay high premiums, which has led to a decline in the overall revenue generation under the OFF program.

As noted above, the United Nations reacted to the market reports of the illegal surcharge by the Government of Iraq by changing the procedures of the oil pricing

²¹⁶ Ibid., p.12

²¹⁷ United Nations Security Council, *Discussion Paper prepared by the UN oil overseers for the Security Council Committee*, 14 March 2002.p.1.

mechanism for Iraqi oil. Originally buyers of Iraqi oil were informed in advance of their purchases of the price the oil was sold. Since the beginning of Phase XI, however, the Iraqi sanctions committee has set the price of oil 'retroactively.' Potential buyers and contract holders of Iraqi crude oil are not informed anymore of the actual price of oil until the end of the month. When the price of oil is announced, contract holders are faced with the choice between lower premium and not lifting oil since it remains the contract holder's discretion to lift or not to lift the oil.²¹⁹ This is apparently based on a direct arrangement between Iraq's State Oil Marketing Organization and the contract-holders and is not provided for under the United Nations approved Crude Oil Sales Contracts.²²⁰ In most cases the contract holders were not able to receive the excessive premium and chose therefore not to lift the oil. As a direct consequence, the retroactive pricing mechanism of oil, combined with the high level of premium demanded by the contract holders of Iraqi crude oil, has led to the reduction of oil exports and in turn to the reduction of total revenue available for the OFF program. The OIP states

it has become evident that at times, when contract holder had to choose between accepting lower premia and not lifting the oil, they chose the latter option. This has become particularly clear during the recent introduction of retroactive pricing: rather than being satisfied with a level of premia corresponding to normal oil industry standards, the contract-holders preferred not to lift the oil. This has meant that in order to maintain the premia at a level of say 30-45 cents per barrel, the contract holders brought about a substantial reduction in export, thereby causing losses to the United Nations - Iraq account averaging approximately \$20 per barrel for each and every barrel not exported...²²¹

The OIP has been able to assess the value of the premiums. According to the OIP, this has take place in the same manner as any other price assessment in the oil industry.

²¹⁸ Ibid.p.5

²¹⁹ United Nations Security Council, *Discussion Paper prepared by the UN oil overseers for the Security Council Committee*, 14 March 2002.p.1

²²⁰ Ibid.

Monitoring and verification of the level of premiums is related to deals and is verified by many active players in the market.²²² According to the OIP the following amounts have been charged: Between early 2002 and the end of May 2002, premiums were reported at around 40 cents per barrel for the United States and the Far East markets and around 30 cents per barrel for the European market. Reported premiums never fell below 25 cents per barrel during this period. Between early June and mid-August 2002, reported premiums dropped to around 20 cents per barrel. Since mid-August 2002, premiums have been reported at levels of between 5 and 10 cents per barrel.²²³

The cumulative influences of the factors outlined above have led to substantial reductions in Iraqi oil exports under the OFF program. According to a OIP report from September 2002,

The level of oil exports has dropped from an average of over 2 million barrels per day in the year 2000, to less than one million barrels per day in recent months. Assuming a sustainable rate of export of 2.1 million barrels per day, between 1 June and 15 September, \$3.2 billion in revenue has been lost, as a result of reduced levels of oil exports in this phase alone.²²⁴

The same report states that industry reports show that oil surcharges have now been dropped.²²⁵ As a direct consequence oil exports increased to "the average of 1.9 million barrels per day as compared with the average of about 371,000 and 910,000 barrels per day, respectively during the week of 31 August to 6 September 2002 and the week of 7 to 13 September...."²²⁶ Oil exports under Phase XII of the OFF program have been erratic. Some recoveries have been noted from of the previous 'sluggish' exports to

²²¹ Ibid.

²²² United Nations Office of the Iraq Program, *Note on the Evolution of premia in 2002*, New York, 16 September, 2002.

²²³ Ibid.

²²⁴ United Nations Office of the Iraq Program, *Statement by Benon V. Sevan Executive Director of the Iraq Program at the Informal Consultations of the Security Council Wednesday, 25 September 2002*, "Revenue," p.2.

²²⁵ Ibid., p.3.

unprecedented high exports of 19.3 million barrels in the week ending November 8.²²⁷

According to the OIP, total oil exports of Iraq have only amounted to 186.1 million barrels in Phase XII, out of 480 million barrels approved by the UN oil overseers. With the current Phase XII ending on November 25, 2002 the total revenue generated is only approximately \$4.46 billion. Iraq has allocated \$5 billion as its target for the humanitarian program. Iraq would therefore need to export \$7 billion of oil in this phase to meet this target. Since this is unlikely, the 'over-allocation' by the Government of Iraq leaves the program in a cumulative shortfall over \$3.1 billion for the humanitarian program since Phase VIII.²²⁸ Since Iraq's battered oil industry was not able to produce more oil, less oil was produced under the OFF program, leaving less money available for the humanitarian component of the OFF program. As a direct consequence of this reduction, a growing revenue shortfall has also been accumulating for the humanitarian program.

The recent dropping of oil surcharges by the Government of Iraq, in September 2002, also coincided with the more recent present political environment of added pressure and the threat of the potential use of force against Iraq by the Governments of the United States and Britain. A new UN Security Council resolution was passed unanimously by all members on November 8, 2002 warning the Government of Iraq "of serious consequences as the result of its continues violations of its obligations" as outlined in UN resolutions.²²⁹ The 180-day report for Phase XII states that during September and October a gradual increase of the rate of export of oil could be identified.

²²⁶ Ibid.

²²⁷ United Nations Office of the Iraq Program, *Weekly Update*, 12 November 2002.

²²⁸ Ibid.

²²⁹ United Nations Security Council, *Security Council Resolution 1441 (2002)*, November 8, 2002, para. 13.

The latter development could be attributed to the elimination of the high premia demanded by contract-holders of Iraqi crude oil, as well as oil purchase contracts signed directly between the State Oil Marketing Organization of Iraq (SOMO) and some oil refining companies, beginning in mid-September.²³⁰

According to the OIP, consequences of the potential threat of the use of force against Iraq can already be identified. A large drop in the shares of oil exports to the United States has occurred. In addition, the potential risk of oil interruption due to a war against Iraq has led to decreases in oil exports under the OFF program.²³¹ It is reasonable to assume that the use of force against Iraq will lead to additional revenue shortfalls for the humanitarian program and possibly to the temporary or long term halt of the delivery of humanitarian items, including food and medicine, to the Iraqi population.

5. 'Over-Contracting' by the Government of Iraq

Iraq is responsible for signing contracts with suppliers of its choice for the purchase of goods. The Government of Iraq signs contracts based on its planning figures, which are based on the revenue it anticipates to generate during a given phase. However, the actual proceeds available from oil sales are in most phases much lower. Iraq therefore, does not export enough oil under the OFF to actually back all of the contracts that it signs with suppliers. Staff of the OIP explained that the Government of Iraq continues to sign contracts with potential suppliers even though it is aware that the actual total revenue available will be lower than the projected revenue in the Distribution

²³⁰ United Nations Office of the Iraq Program, *The Humanitarian program pursuant to Security Council resolution 986 (1995): Note by the Office of the Iraq Program*, New York, 12 November 2002, para.3.

²³¹ Ibid., para.4

Plan.²³² Moreover, according to the Secretary General's report on Phase VI, the Secretariat continues to circulate contracts to the Iraqi sanctions committee

for its consideration and approval applications in advance of the availability of funds, so long as oil revenue projections indicated that sufficient funds would become available to fund all approved applications. However, owing to the considerable imbalance between the value of contracts signed by the Government of Iraq and projected revenues, circulation of applications valued at approximately \$500 million was held in abeyance while consultations were held with the Government of Iraq to establish priorities with respect to those applications.²³³

According to OIP staff, the Government is being asked to halt the contracting procedure with potential suppliers to reflect the actual figures of funding that are available. In addition, the Government is being asked to allocate 'more realistic' figures based on its actual oil export capabilities for sectors in the Distribution Plan.²³⁴ In relation to the contracts not funded, the Government is also asked to prioritize contracts for funding. After numerous appeals by the OIP Executive Director, in recent weeks, the Government of Iraq has finally begun sending lists of priority approved contracts for funding in view of the revenue shortfall. The Government of Iraq however, continues to not adjust the budget. This leads to reports showing a growing revenue shortfall. According to the OIP, the following figures describe the shortfalls for the 59 per cent account:

As at 19 September 2002, the Secretariat had received contract applications signed by the Government of Iraq, with a total value of \$43.95 billion, against a total of \$44.17 billion budgeted under the Distribution Plans for phases I to XII. However, the actual funds available for contracting by the Government of Iraq stood at a total of \$34 billion ...²³⁵

²³² United Nations Headquarters, *Interview with OIP Staff*, New York, September 2002.

²³³ United Nations Security Council, *Report by the Secretary General*, Phase VI, S/1999/187, Part C, para.9, 22 February 1999.

²³⁴ United Nations Office of the Iraq Program, *Statement by Benon Sevan*, 25 September 2002, p.3.

²³⁵ United Nations Office of the Iraq Program, *Note by the OIP*, 19 September 2002, para. 8. New York, 19 September 2002.

The above figures suggest that if all the applications currently processed were approved, including those on hold, the 59 per cent would presently be short of funds by approximately \$9.95 billion. The OIP states further that a total of \$7.1 billion has been allocated to the 13 per cent account since the start of the program. For the implementation of the program in the north an additional \$4.17 billion has been allocated. For the bulk procurement of food, medicine, and vaccines and charges laid for the cost of spare parts and equipment, \$2.93 billion have been allocated for reimbursements to the 59 per cent account.²³⁶

Table 1 shows the total volume of oil exported in each phase, the projected allocations of funds to the humanitarian program as projected by the Government of Iraq in Distribution Plans and compares this to the actual allocations of funds as noted by the OIP.

²³⁶ Ibid. para. 12.

Table 1. Projected vs. Actual Humanitarian Allocations for Phases I-XII

Phase	Period	Security Council Oil Export Ceilings	Total Volume of oil exported per barrel	Market Value/per barrel (lowest and highest price)	Total Value of oil in \$US (million)	Projected Humanitarian Program allocations	Actual Humanitarian Program allocations	**Total Cumulative oil Revenue Shortfall:
Phase XIII	5/12/02 – 3/06/03	Unlimited	figures not available	figures not available	figures not available	Figures not available	figures not available	*Over \$4 billion
Phase XII extended	4 December 2002	-	-	-	-	-	-	-
Phase XII	30/05/02 – 25/11/02	Unlimited	232.2	\$21.55 - \$25.85	\$5, 640	\$ 5.08 billion	\$3.1 billion	\$3.1 billion
Phase XI	1/12/01 – 29/05/02	Unlimited	225.9	\$15.50 - \$24.45	\$4, 589	\$ 4.43 billion	\$2.83 billion	\$1.2 billion
Phase X	4/07/01 – 30/11/01	Unlimited	300.2	\$15.15 - \$24.35	\$5, 350	\$ 5.55 billion	\$3.77 billion	\$1.7 billion
Phase IX extended	3 July 2001	-	-	-	-	-	-	-
*Phase IX	6/12/00 – 3/06/01	Unlimited	293	\$18.00 - \$24.14	\$5, 638	\$ 5.55 billion	\$ Euro 3,253 (million)	-
Phase VIII	9/06/00 – 5/12/00	Unlimited	375.7	\$21.50 - \$29.17	\$9, 564	\$ 7,131 billion	\$6.9 billion	cumulative revenue shortfall
Phase VII	12/12/99 – 8/06/00	Unlimited	343.4	\$20.06 - \$26.87	\$8, 302	\$ 3.52 billion	\$4.6 billion	-
Phase VI extended	11 December 1999	-	-	-	\$7, 402	-	-	-
Phase VI extended	4 December 1999	-	-	-	\$3. 4	-	-	-
Phase VI	25/05/99 – 20/11/99	5.2 billion	389.6	\$13.33 - \$23.94	\$4, 807	\$ 3.004 billion	\$3.04 billion	-
Phase V	26/11/98 – 24/05/99	5.2 billion	360.8	\$7.12 - \$15.09	\$3, 947	\$ 2.75 billion	\$1,573 billion	-
Phase IV	30/05/98 – 25/11/98	5.2 billion (3.1 billion enhanced distribution plan)	308	\$9.02 - \$12.68	\$3, 027	\$ 3.4 billion	\$1.98 billion	-
Phase III	5/12/97 – 29/05/98	2 billion	182	12.18	\$2, 085		\$1.32 billion	-
Phase II	8/06/97 – 4/12/97	2 billion	127	16.99	\$2, 125	-	\$1.32 billion	-
Phase I	10/12/96 – 7/06/97	2 billion	120	17.99	\$2, 150	-	\$1.32 billion	-

* With the adoption of Security Council Resolution 1330 (2000), 5 December 2000, approximately 72 per cent of oil revenues were allocated to the humanitarian program. Allocations to the Compensation und were reduced to 25 per cent.

** "Due to a cumulative oil revenue shortfall dating from Phase VIII (9 June - 5 December 2000) through Phase XII of the program, 2,145 UN-approved humanitarian supply contracts worth some \$4 billion, currently lack funds. The sectors affected by the revenue shortfall are: agriculture (\$694 million); food handling (\$518 million); food (\$491 million); electricity (\$484 million); health (\$460 million); water and sanitation (\$398 million); housing (\$382 million); education (\$306 million); telecommunications and transportation (\$332 million)." (OIP Weekly Update, 17 Dec. 2002)

Source: United Nations, Secretary General reports Phases I-XII United Nations, Government of Iraq Distribution Plans Phases I-XII. OIP Phases of the Program, Weekly Updates, Basic Figures

B. OFF Design

The following is a brief overview of some of the major design flaws of the OFF program. Uneven per capita allocations of the total funds, the lack of a cash component for the centre/south, some general administrative issues and the lack of protection clauses for the items delivered to the centre/south of Iraq, are some of the main design flaws identified.

1. Uneven Per Capita Allocation and Lack of a Cash Component in the Centre/South

A fundamental fault in the design of the program, according to UNICEF is the sixty-six percent allocations for humanitarian assistance with 13% of the total revenue allocated to the north and 53% and later 59% of the total revenue allocated to the south/centre. This allocation translates into an uneven per capita basis. According to UNICEF, "the southern and central regions of Iraq, home to 85% of the population, is provided with 38% less per capita share of the Oil-for-Food program than the north."²³⁷ This differentiation in the design of the OFF has led to a fundamental scarcity of resources available for the larger and more densely populated parts of Iraq. Niblock explains,

Although the percentage of Oil for Food money allocated to the north (13 Percent) was proportional to the percentage of the Iraqi population resident in that area, the percentage of oil for food money that needed to go to the Compensation Fund (about 30 percent of the total) and to support UN operation in Iraq was taken from the remainder of the funds. Accordingly, the proportion that could be devoted to central and southern Iraq was reduced.²³⁸

In addition, beginning in 1999, the absence of an appropriate 'cash component' within the OFF for the centre and the south was increasingly identified as one of the

²³⁷ United Nations, UNICEF, *Iraq web site*, 'Overview', November 27, 2002.

²³⁸ Niblock, *Pariah States...*, p. 165.

major weakness of the OFF program.²³⁹ According to reports, and in contrast to the centre and south, the OFF program in the north has a 10% cash component allowance derived from Iraq's oil sales.²⁴⁰ The Security Council's 1999 Humanitarian Panel report states that a cash component could help to provide faster and more efficient implementation of the OFF-program in the centre and south of Iraq. A cash component was necessary mainly to provide for the payment of local labour to speed up installation of equipment that arrived in Iraq under the OFF. According to Hans von Sponeck, the lack of a cash component resulted in the limited "absorbency capacity of items that come in under the 986 Program...It also explains the delays in the installation of equipment."²⁴¹

Take water and sanitation for example. A new water purification plant is brought into the country, but maybe, in order to install this, you need 3%, 4%, let's say 5% of the value of this equipment as cash in order to have the required labor and the local materials: Perhaps sand, and maybe cement. You also need to have implements, like shovels. All of that is not obtainable under the "Oil-for-Food" Program. So it all must wait until the Government somehow finds or allocates the money. The result is that some of this equipment waits, and is installed later than it is supposed to be. The absence of the cash component has a restraining effect, a delaying effect on the implementation of the "Oil-for-Food" Program.²⁴²

Regular monthly cash components in local currency would support the faster installation of delivered spare parts and pay for related training and maintenance.²⁴³ The implementation of the cash component for the south/centre, however, ran into two main difficulties. First, some of the Security Council members were uncomfortable with the idea of cash in the hands of the Government of Iraq. Security Council Resolution 1330

²³⁹ United Nations Security Council, *Report of the second panel established pursuant to the note by the president of the Security Council of 30 January 1999, S/1999/100, concerning the current humanitarian situation in Iraq*, Annex II, S/1999/356, 30 March 1999, para.56.

²⁴⁰ Global Policy Forum, *Iraq Sanctions: Humanitarian Implications and Options for the Future*, North vs. Centre-South, p.28.

²⁴¹ The Boston Research Group, *Interview with Hans von Sponeck*.

²⁴² Ibid.

²⁴³ United Nations Security Council, *Letter dated 6 June 2001 from the Secretary General addressed to the President of the Security Council*, 6, June 2001. S/2001/566, New York, p.1.

(2000)²⁴⁴ requests the Secretary General to make necessary arrangements for the establishment of a cash component and reiterates that it should be used for "...the cost of installation and maintenance, including training services, of the equipment and spare parts for the oil industry...."²⁴⁵ It also addresses the amount of the cash component, sets it at 600 million Euro and explains further that

the proposal is for funds to be initially transferred from the United Nations escrow account to the Rafidain bank in Amman. Subsequently, the funds will be transferred in Euro, in monthly installments, to the Ministry of Oil, for transfer to the operating companies in Iraqi dinars against the agreed cash flow requirements.²⁴⁶

According to OIP staff, there are at least three main reasons as to why the cash component has not materialized up to now. The Government of Iraq would like to have a cash component, but on its own terms, which cannot be accepted by the Iraqi sanctions committee. In addition, the Government is arguing that the UN would set the prices for labour too high - in accordance with international standard. Moreover, the proposed exchange rate of the Ministry of Oil of 450 Iraqi dinars to 1 United States dollars²⁴⁷ would translate into 500 billion Iraqi dinars per annum. According to OIP staff, the proposed exchange rate and the choice of bank in Amman remain unacceptable to some sanctions committee members.²⁴⁸

2. Weak Processes and the Distribution Plan

The overall working of the OFF program relies heavily on communication between the UN departments and the Government of Iraq and its agencies and ministries, in addition to the coordination of communication with the private sector. Efficient

²⁴⁴ United Nations Security Council, *Security Council Resolution 1330*, New York, December 5, 2000, para 15.

²⁴⁵ United Nations Security Council, *Letter dated 6 June 2001 from the Secretary General addressed to the President of the Security Council*, 6 June 2001.

²⁴⁶ *Ibid.*, p.2.

²⁴⁷ *Ibid.*, p.8.

administrative procedures are therefore of vital importance for the effectiveness of the program at all stages of implementation. Any insufficiencies in administrative procedures on either side can lead ultimately to the late delivery of items to Iraq. The Secretary General's two year review highlighted some of the administrative insufficiencies that plagued the program in the first five phases. According to the report, amongst other areas insufficiencies were identified in the area of banking arrangements.

According to resolution 986 and the MOU, requests to issue letters of credit for suppliers of items must be initiated by the Central Bank of Iraq and must be received by the bank holding the Iraq Account (Bank National de Paris). This procedure, however, was inefficient in more than one way. According to the report, communication between the Central Bank of Iraq and the Banque National de Paris was exclusively handled through telex in the first five phases of program. Confirmation of the receipt of contracts on either side was therefore not possible. Only if suppliers would inquire about the status of the letters of credit would it be known that communication has not occurred. Moreover, continued communication between the two banks in regards to questions posed on letters of credits and clauses would occur. The interruption or delay of any communication by either side would lead to delays in the finalization of credit letters. As a consequence, humanitarian goods were not shipped to Iraq by suppliers. Furthermore, communication procedures between the OIP, the Government and ministries of Iraq and the Banque National de Paris further delayed the shipment of contracts to Iraq. In this particular case of miscommunication the blame was laid on the Government of Iraq.²⁴⁹

²⁴⁸ United Nations Headquarters, *Interviews with OIP Staff*, New York, September 2002.

²⁴⁹ United Nations, *OFF - Two Year Review*, para. 32-37.

Moreover, as the Secretary General states, the Government of Iraq is faced with very difficult choices in allocating the limited resources available to it under the OFF program. Limited resources must not only be allocated across different sectors, but decisions in regard to immediate needs, urgent repairs, basics to keep systems functioning, consumer supplies and measures to slow the overall deterioration of infrastructures must be made.²⁵⁰ The program is therefore in a large part dependent on effective planning by the Government of Iraq and its ministries. The Government of Iraq is also responsible for the allocation of funding to specific sectors in the Distribution Plan. The comparable sectoral funding allocation table developed by the OIP for Phases I - XI shows that sectors such as food and food-handling, housing, oil spare parts received during the first ten phases of the program an actual average of funding that is between 95 and 100 per cent of the Distribution Plan allocation (planning figures).²⁵¹ However, other sectors have been grossly under-funded, especially since Phase VII.²⁵² Some of these affected sectors include education, water and sanitation, health, electricity and agriculture.²⁵³ In an interview, Sevan stated "grave concern over the slow rate of submissions of applications" in particular under health, education, water and sanitation as well as the oil sector by the Government of Iraq. These sectors only received between 30 and 50 per cent of the funding allocation.²⁵⁴

The U.S. Department of State accused the Government of Iraq of under-spending during the period of June to December 2000. According to reports, "During the period,

²⁵⁰ United Nations Security Council, *Interim Report of the Secretary General on the Implementation of Security Council Resolution 986 (1995)*, S/1996/978, New York, 25 November 1996, para.54.

²⁵¹ United Nations Office of the Iraq program, *Statement by Benon V. Sevan*, 25 September, 2000, Annex I, p.10-12.

²⁵² *Ibid.*

²⁵³ *Ibid.*

²⁵⁴ Judy Aita, "Iraq Lagging in buying Food, Medicine for Needy, UN Complains," USINFO, February 01, 2001, <www.globalpolicy.org.>

US\$7.8 billion were available to Iraq for purchases during this period, yet Iraq submitted purchase applications worth only US\$4.26 billion - barely 54 percent of the amount available for purchases to help the humanitarian needs of the Iraqi people."²⁵⁵ However, it is more likely that several reasons in combination lead to the overall poor implementation of the OFF program by the Government of Iraq. The Secretary General noted an overall

lack of a framework to ensure the most effective use of inputs...government officials were, in many instances, overwhelmed by the mismatch between the speed and scale of deterioration and the limited resources available to them to respond.²⁵⁶

The effective planning of the OFF program is identified as a critical component; "Yet, with the exception of the food rationing system, this rarely appears to be available."²⁵⁷

According to the same report,

...the relevant Iraqi authorities are operating systems without adequate information, monitoring procedures, expertise or diagnostic equipment to assess the nature and extend of deterioration.²⁵⁸

In addition, the length, format and content and approval of the Distribution Plan, which is essential for the timely delivery of items, has been identified numerous times as redundant and time consuming. Pauses between the approval of phases and the submission of the Distribution Plan led to delays in oil export procedures under the OFF for approval in Phase II and III.²⁵⁹ The Secretary General suggested that " there should be a single, ongoing distribution plan, kept under constant review and amended as

²⁵⁵"U.S. Department of State on Iraqi Under-spending," www.fas.org/news/iraq/2001/01/iraq-010126a.htm. 2/8/01.

²⁵⁶ United Nations Security Council, *Two Year Review*, para. 60.

²⁵⁷ UN, Secretary General, *Two Year Review*, para. 60.

²⁵⁸ Ibid.

²⁵⁹ United Nations security Council, *Report of the Secretary General pursuant to Paragraph 7 of Resolution 1143 (1997)*, S/1998/90, New York, 1 February 1998, para.10

necessary...."²⁶⁰ Moreover, program planning cycles are limited to 180 days, which impedes the development of long term planning cycles and objectives. The Iraqi sanctions committee has not implemented these improvements until the present date.

3. Revenue Shortfall for the Humanitarian Program ESB 59% and ESC 13% accounts and the Issue of Reimbursements

The decline in the total revenue available for the OFF system leads to direct losses of revenue for the humanitarian program. In accordance with resolution 986 (1995) two separate accounts provide revenue for the purchase of humanitarian items. For the purchase of humanitarian items in the south and centre of Iraq, originally 53 per cent of the total revenue generated under the OFF program was allocated. For the purchase of humanitarian items in the north of Iraq, 13 per cent of the total revenue available for the OFF program was allocated, making a total of sixty six per cent. Resolution 1330 (2000) increased allocations to the humanitarian accounts to a total of 72 per cent, with 59 per cent of the total revenue allocated for the centre and south, by decreasing allocations to the Compensation Fund to 25 percent.²⁶¹ Additional funds for the humanitarian accounts were also allocated in accordance with resolution 1360 (2001), which requested that funds be freed from other sub-accounts established to meet the administrative and operational costs of the United Nations for administering the program pursuant to paragraph 8 (d) of resolution (1995).²⁶² In accordance with this, \$211 million have been transferred to the ESB 59% account.²⁶³ Moreover, the 59% account also receives funding reimbursements. This funding is made available by the Government of Iraq for the bulk

²⁶⁰ United Nations Security Council, *Report of the Secretary General pursuant to Paragraph 7 of Resolution 1143 (1997)*, S/1998/90, New York, 1 February 1998, para. 49-51.

²⁶¹ United Nations Security Council, *Security Council Resolution 1330 (2000)*, S/RES/1330, para. 12.

²⁶² United Nations Security Council, *Security Council Resolution 1284 (1999)*, S/RES/1284, para. 24.

²⁶³ United Nations Office of the Iraq Program, *Note by the OIP*, 12 November 2002, New York, para. 8.

purchase of foods and medicines for the north. Both accounts also receive funds from interest accumulated.²⁶⁴

Funds that are available in the two humanitarian accounts (59% and 13%) are further subdivided into specific sectors. The Executive Director of the Iraq program states clearly that the responsibility for the sectoral allocations of funds as outlined in the Distribution Plans remains with the Government of Iraq. However, all financial allocations presented in the Distribution Plan must be approved by the UN Secretary General. Nevertheless, the United Nations regards allocations as being provisional only.²⁶⁵ The actual funding level for sectors is based on the estimated revenues to be received from the volume and price of oil exports from Iraq.

Initially funds were distributed to sectors that correspond to food items, medical supplies and equipment, water and sanitation supplies and equipment, and other materials and supplies in particular those needed for the rehabilitation of infrastructures essential to meet humanitarian needs. According to the present Distribution Plan for Phase XII, ten sectors have been added. This Distribution Plan allocates funds to twenty-five sectors of the economy. The OIP states,

The distribution plan forecast a humanitarian budget of over \$5.08 billion, allocated among 25 sectors, including \$600 million for oil industry spare parts and equipment. It allocated almost \$355 million to meet the needs of especially vulnerable groups. Over \$1.27 billion are earmarked for food supplies, while \$150 million are set aside for the purchase of medicines and medical supplies. The plan indicates allocations for 10 new sectors, namely, construction, industry, labour & social affairs, Board of Youth & Sports, information, culture, religious affairs, justice, finance, Central Bank of Iraq.²⁶⁶

²⁶⁴ United Nations Security Council, Report by the Secretary General, S/1999/1162, Part C, para.14-15.

²⁶⁵ Government of Iraq, *Distribution Plan Phase XII*, Annex I, "Letter dated 13 June 2002 from the Executive Director of the Iraq Program addressed to the Permanent Representative of Iraq to the United Nations," New York. <http://www.un.org/Depts/oip/dp/dp12/index.html>.

²⁶⁶ *Ibid.* *Distribution Plan*.

Since Phase VIII of the OFF program, there has been a growing cumulative shortfall in funds for the humanitarian accounts and subsequently for the sectors. The latest report of the OIP from 25 September 2002, states that the Iraqi sanctions committee and the Secretariat had approved 19,541 contract applications, with a total value of \$35.72 billion for the OFF. However, if all the applications currently being processed were approved, including those previously on hold, the ESB (59 per cent) account would be short of funds by over \$10.6 billion.²⁶⁷

Several reasons can be identified that lead to a revenue shortfall for the humanitarian accounts. In accordance with the Memorandum of Understanding of 1996, contracts that are received by the OIP for funding are funded on a "first come first serve" basis. Most revenue is available at the beginning of each phase. Therefore most contracts received at the beginning of the phase are funded while contracts received at later stages within a phase run into the possibility that funding is not available. It is also up to the Government of Iraq to indicate priority funding of contracts, especially in view of the revenue shortfall, with the limited funds available. The Secretary General's report on Phase IV explains, "Some Phase IV applications pertaining to items requiring relatively early delivery may, once approved, be transferred to a subsequent phase for funding."²⁶⁸ This practice would guarantee that funding for prioritized contracts is available at the beginning of the phase. At the end of each phase numerous contracts are forwarded to the next phase for funding. According to OIP staff, these contracts have been moved into the next phase due to the lack of funding at the end of the previous phase, if and when requested by the Government of Iraq. The OIP cannot transfer

²⁶⁷ United Nations Security Council, *Report by the Secretary General*, Phase XII - 90- day report, para. 8.

contracts from one phase to another or from one sector to another without the Government's explicit request. Sevan explains that these transferred approved contracts are then funded occasionally from the cancellation of other contracts from one phase to the next. According to the Iraqi Government, delays are further aggravated by the Iraqi sanctions committee, which insists that that these contracts should be reconsidered as if they were new.²⁶⁹ In his statement of November 19, Sevan states

The current arrangement by which revenues allocated to the humanitarian program during a given phase are tied up to applications submitted only under that particular phase, is causing enormous difficulties for the efficient utilization of resources, particularly at a time when gross funding shortfalls exist... The management of the funding process would be greatly facilitated if all allocated revenues were to be treated as one single source for funding applications approved under any phase, in accordance with the order of priority established by the Government of Iraq.²⁷⁰

In addition, the practice of reimbursement to the 59% account for food and medicine bulk purchases for the north has created the lack of availability of funds for procurements for the 59% account. According to Sevan, reimbursements from the 13% to the 59% account are withheld until food and medicine is delivered to the northern governorates. It has therefore been suggested that funds corresponding to the costs be transferred upon the approval of applications. According to Sevan, "this would make available to the ESB account some \$500 million for issuing approval letters for approved applications that remain un-funded."²⁷¹ The issue of fund reimbursements was already discussed in 1999. According to the Secretary General,

²⁶⁸ United Nations Security Council, *Secretary General Report*, Phase IV, S/1999/1162, Part C, para. 14, 12 November 1999.

²⁶⁹ The Government of Iraq, *Talking Points on the Process of MOU Implementation*, <<http://www.uruklink.net/mofa/mofa/epage.htm>>.

²⁷⁰ United Nations Office of the Iraq Program, *Statement by Executive Director Benon V. Sevan at the Informal Consultation of the Security Council, Tuesday November 19, 2002*, New York, 19 November, 2002, "Revenues Across all Phases."

²⁷¹ Ibid., "Reimbursement from ESC (13%) Account."

In a letter dated 11 February 1999, addressed to the Chairman of the Security Council Committee, the Executive Director of the Iraq Program submitted a new system for advancing funds for food procured and delivered to Dahuk, Erbil and Sulaymaniyah, for consideration by the Committee... It is regrettable that the Security Council Committee has been unable to act on the proposal, which has been before it since February. In the meantime, very serious difficulties are being encountered, particularly in the light of the substantial drop in revenues during phase IV and the first half of phase V, in implementing the program for the centre and south of Iraq, resulting in the deferral of funding of approved applications for contracts for those regions, particularly in sectors other than food and medicine.²⁷²

The Iraqi sanctions committee a decision has not been made by until the date of writing (December 2002).

Moreover, while the actual funding shortfall has not been dealt with, a deficit of funding due to oil revenue shortfall since Phase VIII has been accumulated and has been forwarded from one phase to the next. As at September 2002 the cumulative shortfall from earlier phases has left over \$3.1 billion worth of contracts for various humanitarian supplies approved by the United Nations un-funded.²⁷³ As stated by the OIP, the total cumulative shortfall as at December 17, 2002 is \$4 billion.²⁷⁴

*4. Goods Ordered, but not Received and the lack of Commercial Protection
Clauses for the Delivery of Damaged Goods to the Centre/South*

A series of major additional problems can be identified that are embedded within the design of the OFF program and that have further negatively affected the arrival of goods in Iraq. The Iraqi Ministry of Trade negotiates with the suppliers and signs contracts for items to be delivered to Iraq. The Government's Ministries must indicate

²⁷² United Nations Security Council, *Review and Assessment of the Implementation of The Humanitarian program established by Security Council resolution 986 (1995), (December 1996- November 1998)*, S/199/481, New York, para.43-45, 28 April 1999.

²⁷³ United Nations Office of the Iraq Program, *Statement by Benon Sevan, Wednesday 25 September 2002*, New York, p.2.

²⁷⁴ United Nations Office of the Iraq Program, *Weekly Update*, New York, 17 December, 2002.

items that belong to one project. The OIP has no means of knowing what items belong to what project. Moreover, the Ministries' organization strongly influenced the speed at which signed contracts are submitted and received by the OIP for further processing. According to OIP staff, some contracts signed by the Government of Iraq with suppliers are sometimes not received by the OIP until half a phase later and are therefore not processed.

Some rules and procedures were implemented by the OIP to deal with items that have not been received in Iraq. Every approved application has an initial one year validity period guaranteed from the date of issuance of the approval letter.²⁷⁵ An extension in form of a written request forwarded to the OIP can prolong the validity of an application beyond the initial one year validity period. Information on the value of contracts approved/funded and not delivered after one year is, according to OIP staff, available in the Secretary General reports. The Secretary General report of Phase XII states that

approval letters for 160 applications, valued at \$382 million, were issued before 31 December 2001, but the Central Bank of Iraq had not requested openings of letters of credit as at 31 July 2002. Moreover, there were 860 applications, worth a total of \$1.76 billion, for which the relevant letters of credit had been issued for over one year, but under which no deliveries have been made to Iraq.²⁷⁶

UN independent inspection agents at the border authenticate the delivery of OFF goods imported to Iraq, but not any other goods. Quality control of OFF items does not occur at the border, but at a later time by the Government of Iraq. The suppliers therefore receive payments for items *before* any testing of the supplies has taken place. As a result, there are numerous defective items entering Iraq. According to Sevan, Iraq has been denied

the right to include provisions in applications that would allow it to use established commercial protection clauses. In reaction, the Government of Iraq has requested some suppliers to pay a port fee for the unloading of goods. In some cases this fee has been unreasonably high, almost 10 per cent of the contract value. Commercial protection clauses, including performance bonds, however, are allowed in applications submitted by the UN agencies and Programs under the ESC (13 per cent) account for the three northern governorates of Iraq.²⁷⁷ According to OIP staff, however, quality checks are subject to political influences and the relationship of the Government of Iraq with the supplier of the supplier state. While the OIP encourages normal commercial activities between states and suppliers it is not able to enforce these. It remains the responsibility of the Government of Iraq to choose reliable suppliers.²⁷⁸ However, the responsibility for the absence of Commercial Protection clauses also lies with the Iraqi sanctions committee. According to Sevan, proposals in that regard have been submitted to the Iraqi sanctions committee since July 1999, however, no action has been taken by the committee to improve the situation and to allow standard commercial protection clauses in the contracts signed by the Iraqi Government. According to Sevan,

as detailed in the previous Note by the Office of the Iraq Program, dated 19 September 2002, pharmaceuticals and medical supplies are delivered with short shelf life; high protein biscuits and therapeutic milk that fail quality control; items with essential components missing or defective; equipment delivered but not assembled; vehicles, machines and spare parts delivered in a damaged condition or with wrong technical specification; foodstuffs that, while being safe for human consumption, are of an inferior quality to that contracted. These are all largely due to the lack of commercial protection. The only protection given under the present procedures is to the suppliers who get paid once it is authenticated by the independent inspection agents that the supplies had been delivered to Iraq. However, under the present procedures, the Government of Iraq is not allowed to

²⁷⁵ United Nations Office of the Iraq program, *Glossary*.

²⁷⁶ United Nations Security Council, Report of the Secretary General, Phase XII, 90 days, 19 September, 2002, para 9.

²⁷⁷ United Nations Office of the Iraq program, Benon V. Sevan Report, Feb 2002.

²⁷⁸ United Nations Headquarters, Interview with OIP Staff, "Contract Department," September 02.

include commercial protection provisions in the contracts signed with its suppliers.²⁷⁹

5. Contracts Placed on Hold by Individual Members of the Iraqi Sanctions Committee

The continued growth of the value of contracts placed on hold by members of the Iraqi sanctions committee led to numerous appeals by the Secretary General²⁸⁰ and the Director of the OIP²⁸¹ for speedier approval of items. A Secretary General report states that the effectiveness of the humanitarian program has suffered considerably, not only because of shortfalls in the funding levels for earlier phases, but also because of the large number of applications placed on hold by members of the Iraqi sanctions committee. the sectors that are particular of concern include electricity, water and sanitation, transport and telecommunications. Large numbers of holds are placed also on applications for spare parts and equipment in the oil sector. The functioning of the oil sector is, however, of primary importance since it is the only source of revenues for the OFF program.²⁸²

The OIP Summary Status of Contract Applications for the 59 per cent account shows that the value of contracts placed on hold jumped drastically to \$36 million in Phase V in comparison to \$5,870,270 in Phases III and IV. With the extreme growth of the program, holds jumped further from Phase IV to a value of \$362 million in Phase VI. Phase VIII, Phase IX and Phase X saw an increase to over \$1 billion applications placed

²⁷⁹ United Nations Office of the Iraq Program, Statement by Benon V. Sevan Executive Director of the Iraq Program at the informal Consultations of the Security Council Tuesday, 19 November 2002, New York, 19 November 2002, "Commercial Protection."

²⁸⁰ United Nations, *Letter Dated 22 October 1999 from the Secretary General addressed to the president of the Security Council*, S/1999/1086, 23 October 1999; also *Report of the Secretary General*, S/2000/208, 10 March 2000.

²⁸¹ United Nations, *Formal Meeting: Briefing by Executive Director of the Iraqi program on Thursday, 20 April 2000*, <<http://www.un.org/Depts/oip/background/latest/bvs000420.html>>.

²⁸² United Nations Security Council, Report of the Secretary General, S/2000/208, 10 March 2000.

on hold. The total value of holds placed on items in all phases for all sectors is over \$4,5 billion.²⁸³

The accumulation of contracts placed on hold by members of the Iraqi sanctions committee is most often blamed on the political interests of members of the Iraqi sanctions committee. According to Hans von Sponeck, a review of the holds has shown that there is often a lack of rationale behind their placement. An item that is released in one phase might not be released in another. An item that is released for one company may not be released for another. Moreover, an item that is released for one country might not be released for another.²⁸⁴

Some of these inconsistencies could be explained by the involvement of governmental departments in the placement of holds. Contracts that are under the scrutiny of sanctions committee members are also discussed with other authorities.²⁸⁵ In the case of the US these authorities are well known. A chart from a recent report by the United States General Accounting Office illustrates the involvement and influence of a wide range of US governmental agencies on the decision-making process of the US sanctions committee member. According to the GAO report, after the UN distributes the contracts to the 15 members of the Iraq Sanctions Committee, the U.S. mission to the UN distributes US contracts for technical review to several US Governmental agencies. US contracts are reviewed by the Department of State Bureau for Nonproliferation Affairs, the Department of Defense Threat Reduction Agency, the Department of Energy and the Department of State Sanctions Office. The Department of State compiles responses of

²⁸³ United Nations Office of the Iraq Program, *Summary Status of Contract Applications under 59% ESB Account by Phase with Arrivals and Distribution as at 3 July 2002*,

²⁸⁴ The Boston Research Group (BRG), *Interview with Hans Von Sponeck*, The Carr Center for Human Rights, Harvard University, 1 May 2000.

²⁸⁵ Ibid.

these agencies and departments and issues its instruction to the Iraqi sanctions committee member. Based on the information forwarded by these departments the Iraqi sanctions committee member then exercises the right to approve or place a hold on a contract. Since all contracts used to be circulated to the Iraqi sanctions committee members, including the US, with the exception of those on the "fast-track" list, one would conclude that the US did not review only US contracts. The contract is either placed on hold due to its weapons or dual use nature or due to a request for more information on the contract or its end use.²⁸⁶ It is assumed that the member of the Iraqi sanctions committee makes use of the departments involved in this process to acquire knowledge and consult on most contracts that come under the review of the Iraqi sanctions committee. It is therefore entirely possible that items that are not on the '1051 list' or any other list are nevertheless placed on hold by members of the Iraqi sanctions committee based on the recommendations that are forwarded to this member by various Governmental agents.

The consequence of the holds placed on items has been dramatic. According to several Secretary General reports particular sectors in which holds cause problems include the transportation sector, the food distribution sector, the water and sanitation sector, and the agricultural sector. The transportation sector has been mainly important for moving goods from the five main entry points for oil-for-food commodities, to the rest of the country. Food distribution has been hampered by the lack of trucks available for this sector and by the lack of spare parts for repairs. The quality and availability of water in Iraq has also been hampered by applications placed on hold for spare parts of water treatment units. Mechanical and electrical equipment for sewage treatment works

²⁸⁶ US-GAO-02-625, "U.N. and U.S. Export Approval and Licensing Processes. Iraq Sanctions," page 18, Figure 5.

also remained on hold. In addition, agriculture has been particularly affected by holds on vaccines against cattle diseases and pesticides.

To speed up and to limit some of the involvement of the Iraqi sanctions committee in the approval of contracts, 'fast-track' procedures were first implemented by in March 2000. The OIP was authorized to approve items on a list that included generally food, medicine and other humanitarian goods, without the circulation of these contracts to the Iraqi sanctions committee. The fast track list was expanded to include items in sectors such as housing, telecommunications and others in the following phases. Fast track procedures implemented to allow for a speedier approval of goods, such as oil spare parts, did not decrease the growing number of applications placed on hold by members of the Iraqi sanctions committee.²⁸⁷ In 2001, the Iraqi committee began to approve partial contracts in an efforts to oppose the blocking or placing on hold of an entire application under its 'no objection' procedures as outlined in resolution 661 (1990) and 687 (1991). However these procedures did not limit the number of applications placed on hold as anticipated. The Secretary General report of November 2002 explains,

Applications submitted under resolutions 661 (1990) and 687 (1991) are not reviewed by UNMOVIC and IAEA, and the judgment on their technical specifications remains entirely with the experts of the Committee members. This would appear to have resulted in a considerable amount of unnecessary holds or blocks, which are rarely removed subsequently.²⁸⁸

The continues growing value of contracts placed on hold from May 2001-2002 from \$3.71 billion worth of contracts placed on hold by 14 May 2001 in comparison to \$5.17 billion one year later, made changes to the application review mechanism of the Iraqi sanctions committee an absolute necessity.

²⁸⁷ United Nations, OIP, Benon Sevan, Formal Meeting of the Iraqi sanctions committee on the issue of 'hold', (20 April 2000.)

With the adoption of resolution 1409 (2002) further changes to the 'fast track' procedures were implemented. Resolution 1409 (2002) was approved on 14 May. Changes to the procedures included a reduced role of the UN's sanctions committee in processing contracts for export of civilian supplies to Iraq. To facilitate this reduced role, an extended Goods Review List (GRL) was adopted. Goods not on the GRL can now be imported by Iraq without approval of the Iraqi sanctions committee. The GRL provides an extensive inventory of items and chemicals that have potential military and civilian use. Each application includes technical specifications. Determinations of applications are made based on whether an application contains items that are prohibited under relevant UN resolutions and under the new GRL. The Iraqi sanctions committee's review mechanism applies only to applications that contain potential dual use items that are referred to in the GRL. Any outside input by governments is therefore eliminated. This new procedure promises therefore to eliminate holds placed on applications by members of the Iraqi sanctions committee based on recommendations they received by their governments and other agencies. The OIP "Weekly Update" explains,

Paragraph 18 of the new set of procedures divides contracts on hold into two categories. The first category comprises contracts that contain "dual use" item(s), as determined by the United Nations Secretariat experts, which are returned to the submitting Mission or United Nations agency for possible re-submission under the new procedures... The second category includes all other contracts on hold, which are re-circulated by OIP under the new procedures. This process will be concluded by mid-September and with the completion of their re-assessment by the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) and by the International Atomic Energy Agency (IAEA) in mid-October, it is foreseen that there will no longer be contracts on hold.²⁸⁹

According to the Secretary General report of November 2002, at the start of the implementation of the new procedures in June 2002 the number of holds stood at 2,202

²⁸⁸ United Nations Security Council, *Report of the Secretary General Report*, S/2002/1239, para.57.-58.

applications valued over \$5.4 billion and ²⁹⁰ with 23 per cent of the total value of applications being reassessed.²⁹¹

Critics of the resolution point out that it does not "lighten directly what is probably the sanctions' main burden on Iraq's economy, namely constraints in Iraq's income."²⁹² The resolution does not allow for any more income and fails to deal with some key issues of the Iraqi economy, such as foreign investment, the export of non-oil items and enhanced border controls to ensure that illegal trading between neighbouring countries and Iraq does not take place. Rowat states:

...resolution 1409 contains some innovations that may improve the OFF program's efficiency. At the same time it avoids the problem that have dogged the sanctions for over a decade now. In leaving unaltered the sanctions' heaviest economic burdens, it continues to make Iraqi civilian well being contingent upon the behaviors of a government whose insensitivity to civilian well being is trumpeted by the US and the UK, the resolution's proponents. The resolution actually heightens this inconsistency by increasing the Iraqi government's freedom of action within the OFF without providing it with clear incentives to improve its humanitarian performance.²⁹³

The above problems as outlined above constitute primary areas of insufficiencies of the OFF program. Because of the political interests of actors involved these problems are also the most difficult to prevent or to improve. In addition, the political nature of these problems led only to incremental improvements. These improvements are only implemented over long period of times, if at all. Moreover, some problems also arise out of the reactionary nature of political actions. They are therefore complex and cannot be predicted or mitigated. These political influences cause however direct and enormous inefficiencies in the implementation of the OFF. Because of the complexity of these

²⁸⁹ United Nations Office of the Iraq Program, *Weekly Update*, 17-23 August 2002, New York, 27 August 2002.

²⁹⁰ United Nations Security Council, *Report of the Secretary General Report*, S/2002/1239, para. 46-47.

²⁹¹ Ibid.

²⁹² Colin Rowat, "Iraq Sanctions Saga Continues Amid Policy Confusion," *The Middle East Economic Survey*, Vol. XLV No 23, 10 June 2002.

issues it is also not possible to identify only one main reason for the development of insufficiencies. Equally the responsibility for the occurrence of problems cannot be blamed on one actor only.

Summary and Conclusion

This chapter has outlined primary problems influencing the OFF program. According to latest figures of November 2002, Iraq has exported approximately a total of \$59,722 (million) of oil since the inception of the program. As the above chapter has outlined, on the surface these figures seem high. Taking into account the above influences, however, a cumulative funding shortfall has been developing. As outlined above, this shortfall has been caused by several interconnected factors. The shortages of revenue available to the OFF program lead directly to overall shortages of items in all sectors.

In addition, revenue for the humanitarian program is also scarce due to the uneven allocation of funds to the north compared to the south/centre. Moreover, as mentioned in earlier chapters, high allocations to the UN Compensation Fund further derail needed funds from the humanitarian accounts to fund war reparation costs.

In addition, many items needed for the rehabilitation of sectors are further held back to enter Iraq due to holds placed on applications by the Iraqi sanctions committee. Items that are approved and do arrive in Iraq are, as outlined above, often damaged with no protection clauses available to the Government of Iraq. Items shipped by suppliers often do not pass standard quality tests. This in combination, with the inability of the program to improve itself without the approval of the Iraqi sanctions committee members

²⁹³ Ibid.

leads to severe insufficiencies in the implementation of the OFF program. Moreover, these influences have negative bearing on the program above and beyond the political and financial constraints mentioned. The burden of these insufficiencies, however, is disproportionably shouldered by the Iraqi civilian population as compared to the Iraqi Government.

Chapter V: Analysis

...even if all supplies arrived on time, what was being provided under resolutions 986 (1995) and 1111 (1997) would be insufficient to address, even as a temporary measure, all the humanitarian needs of the Iraqi people. In particular, I stressed the extent to which a genuine improvement in the nutritional status of the population also depended on concomitant improvements in other sectors.

United Nations Security Council, *Review and Assessment of the Implementation of the Humanitarian Program Established Pursuant to Security Council resolution 986 (1995) (December 1996 - November 1998)*, S/1999/481, New York, para.10. 28 April, 1999.

Previous chapters have outlined some of the shortcomings in the implementation and in the design of the OFF program. This chapter analyzes the impact of these shortcomings on one specific sector, the health sector. The objective of this brief analysis is to highlight how problems that have been identified in previous chapters work out in one sector, and to show also the cross-sectoral links whereby problems in one sector are passed on to another. Of fundamental importance remains also the plight of the Iraqi population, however a detailed analysis on the specific effects of the sanctions on the civilian populations remains well beyond the ability and scope of this thesis. Moreover, while it is possible to question the severity and the precise effects of sanctions on the civilian population of Iraq, it is not possible to question connections, relations, and effects of shortcomings, on sectors, across sectors and on the entire OFF program. The focus of this analysis remains therefore, on the mechanism of the OFF.

Any assessment of the OFF program must, however, be placed into the context of sanctions as implemented in 1990. The analysis begins therefore with a brief illustration of the situation of the agriculture and health sector, *prior* to the implementation of the OFF program in 1995. It develops this further to show the impact of the scarce resources available for the OFF program and to illustrate the impact of the lack of a cash

component for the centre/south. Moreover, the direct consequences of holds placed on items in several sectors and their influences on the health sector are highlighted. In addition, effects arising out of delays or cancellation of contracts either by the UN departments or by the Government of Iraq are also illustrated.

1. The Health Sector

The war against Iran in the 80s, the Gulf War and the sanctions implemented in 1990 had considerable effects on various levels on the health sector in Iraq. Local facilities manufacturing health supplies were shut down and many professionals in the health sector left the country, while the overall health system declined rapidly.²⁹⁴ Especially during the Gulf War Iraqi infrastructure was targeted and damaged.

With the implementation of sanctions in 1990, the Inter-Agency Humanitarian assistance program, in addition to the UNICEF Country Office, mobilized financial resources from the international community in forms of voluntary donations to cover the basic expenses of an emergency operation in Iraq. According to UNICEF, the emergency operation focused primarily on basic services. These services were offered in the sectors of health, water supply, sanitation, and nutrition.²⁹⁵ In addition, the Government of Iraq implemented a highly effective ration system in 1990. According to the Secretary General,

Between 1990 and 1996, the Government of Iraq provided a monthly food ration with a caloric value of between 1,250 and 1,400 kilocalories per person per day in the centre and south of Iraq. The caloric value of the food offered by the rations during that period was one third of what had

²⁹⁴ United Nations Security Council, *Review and Assessment of the Implementation of the Humanitarian Program Established Pursuant to Security Council resolution 986 (1995) (December 1996 - November 1998)*, S/1999/481, New York, para.77. 28 April, 1999.

²⁹⁵ United Nations, UNICEF, *UNICEF Programs and Activities in South-Centre Iraq, 1990s* - overview.

been previously available, and 60 per cent of the minimum requirement as defined by the World Health Organization (WHO).²⁹⁶

According to a United Nations Food and Agriculture Organization and World Food Program Crop and Food Supply Assessment mission to Iraq in 1993,

Since September 1990 the public rationing system, has provided food to the population at highly subsidized prices, which currently represent less than 1 percent of the cost of market purchases. These rations are an exclusive and indispensable means of sustenance for a vast majority of the households...²⁹⁷

The assessment estimated Iraqi food needs for the period 1993 to 1994 at 5.4 million tons of basic foodstuffs, approximately \$2.5 billion, to cover the basic food needs of a population of 19.5 million. According to the Mission's report, this estimate represents a lower food need of Iraq as compared to 1990/1991, due to Iraq's ability to increase its domestic food production during 1993/94. However, even this decreased estimate "...cannot possibly be funded by the international community and would therefore have to be borne by Iraq itself."²⁹⁸

Furthermore, as a direct consequence of the sanctions imposed, the Iraqi population became unable to fund its basic food needs. According to the Mission, the population had been hit with a virtual collapse in terms of personal incomes and of purchasing power since the implementation of sanctions. This coincided with a drastic

²⁹⁶ United Nations Security Council, *Review and Assessment of the Implementation of the Humanitarian Program Established Pursuant to Security Council resolution 986 (1995) (December 1996 - November 1998)*, S/1999/481, New York, para.70. 28 April, 1999.

²⁹⁷ United Nations, FAO/WFP, *Special Alert: FAO/WFP Crop and Food Supply Assessment Mission to Iraq July 1993*, D/V 1502, Table 3, <<http://www.cam.ac.uk/societies/casi/info/undocs/fao1993.html>>.

²⁹⁸ United Nations, FAO/WFP, *Special Alert: FAO/WFP Crop and Food Supply Assessment Mission to Iraq July 1993*, No 237, para.3, <<http://www.cam.ac.uk/societies/casi/info/undocs/fao1993.html>>.

fall in the unofficial exchange rate of the Iraqi dinar, and with unprecedented price hikes for basic commodities.²⁹⁹

Moreover, local food production decreased due to the decline of inputs in the agricultural sector as well as an overall decline and decay of all sectors, with the implementation of sanctions. Overall shortages of spare parts and equipment for the agricultural sector, shortages of equipment of basic repair items of water pumps and farm machinery such as tractors and harvesters, the lack of fuel and fertilizers led further to enormous pre-crop losses and severe difficulties in crop production.³⁰⁰

Shortages of locally produced foods affected the market prices for items. With the market prices for basic food items rising, large segments of the civilian population were unable to substitute their monthly food rations as handed out by the Government of Iraq. The assessment states further,

Independent market surveys carried out by the Mission in both the rural and urban areas showed phenomenal increase in food prices. For example, compared to the pre-embargo (July 1990) levels, the average price of wheat flour (the most important staple food) increased in June 1993 by 355 times (or a 35 500 percent increase); rice by 71 times, vegetable oil by 106 times and sugar by 149 times...³⁰¹

The United Nations emergency feeding program continued until 1993. It is reasonable to conclude that the sanctions and the four-year delay in the implementation of the OFF program led to further deterioration of all sectors in Iraq.

2. Achievements and Shortcomings

The first goods arrived in Iraq under the OFF program in April 1997. In the initial stages of the program implementation an overall lack of a clear strategic

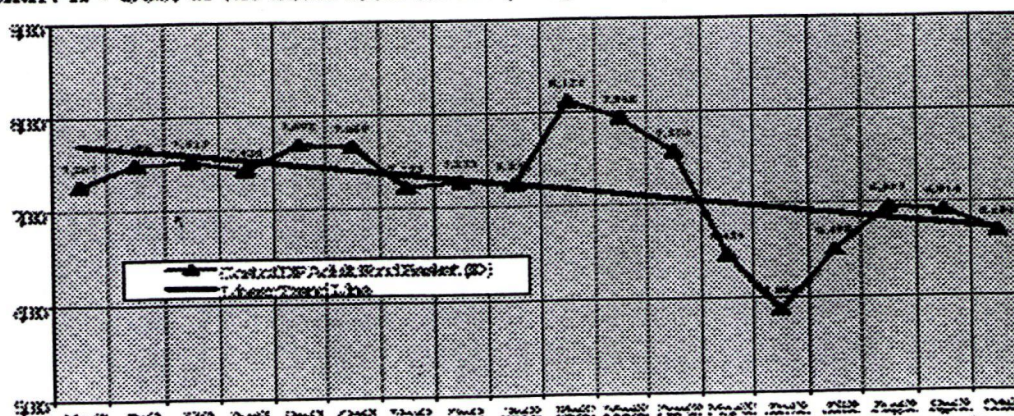
²⁹⁹ United Nations, FAO/WFP, *Special Alert: FAO/WFP Crop and Food Supply Assessment Mission to Iraq July 1993*, D/V 1502. "Prices and Incomes."

³⁰⁰ United Nations, FAO/WFP, *Special Alert: FAO/WFP Crop and Food Supply Assessment Mission to Iraq July 1993*, D/V 1502. "Food Production in 1992/93."

implementation by the United Nations agents and departments and the Government of Iraqi can be noted. Especially in the agricultural sector, according to the Secretary General in the first three phases, "neither fertilizers, not seeds, nor any smaller equipment were procured..." under the OFF. In contrast, an over-emphasis on machinery was noted by the Secretary General: "agro-machinery sub-sector received over 60 per cent of total resources, chemicals, and spraying equipment received 24 per cent, and the remainder went to veterinary supplies."³⁰² At the same time, the Secretary General refers to a number of difficulties in the processing of contracts. These included

...a lack of standardization and item coding in distribution plan annexes, and a shortage of staff in the Contracts Processing Section of the Office of the Iraq Program to evaluate, circulate and release applications in a timely matter. A large number of applications were also placed on hold.³⁰³

Chart II - Cost of the adult food basket (Iraqi Dinar)*



* The cost of the food basket is calculated on the basis of an adult ration recommended in DP XII and applying the average monthly market price of each commodity.

Source: United Nations Office of the Iraq Program, *Note by the OIP*, 12 November 2002, New York, para. 54, Chart II.

³⁰¹ Ibid.

³⁰² Ibid., para. 93.

³⁰³ United Nations Security Council, *Review and Assessment of the Implementation of the Humanitarian Program Established Pursuant to Security Council resolution 986 (1995) (December 1996 - November 1998)*, S/1999/481, New York, para.47. 28 April, 1999.

However, with the implementation of the OFF program, some major immediate achievements can also be noted. The caloric value of the food basket rose dramatically, with the majority of the food items being imported.

Moreover, according to Chart II, published by the OIP in its note from November 12, 2002, since May 2001 the cost of the food basket has dropped. The note states further, that the Iraqi Government changed its distribution policy and distributed three rations over a two months period. This has also helped to stabilize prices.

Nevertheless, the caloric value of the food basket has not been sufficient in most months. The report of Secretary General in November 2002 states for the centre/south,

in the food sector, the nutritional value of the monthly food basket distributed countrywide has almost doubled since 1996, from about 1,200 to about 2,200 kilocalories per person per day. However, the United Nations agencies and programs estimate that over 60 per cent of the Iraqi population — the poorest of the poor — rely solely on the monthly food basket to meet all household needs.³⁰⁴

The food sector has also been influenced strongly by the food-handling sector. The functioning of the food-handling sector is of tremendous importance for the movement of food and medicine items throughout the country. Rail way stations, trucks, buses and all modes of transportation fall within this sector. Any inefficiencies and delays influence the availability of commodities in Iraq. According to OIP's *Basic Figures*, a total of 2,004 applications have been received since the inception of the program for this sector. Only 1,529 applications were approved or 'fast tracked'; the rest of the applications have therefore been blocked, cancelled or placed on hold by the Iraqi sanctions committee.³⁰⁵ According to the Secretary General,

³⁰⁴ United Nations Security Council, *Report of the Secretary General Pursuant to Paragraph 7 and 8 of Security Council resolution 1409 (2002)*, S/2002/1239, New York, 12 November 2002, para. 6.

³⁰⁵ United Nations Office of the Iraq program, *Basic Figures*, <<http://www.un.org/Depts/oip/background/basicfigures.html>>.

Between 15 April and 19 May 2000, 29 food-handling applications worth \$164.1 million were released from hold. However, in the same period 16 applications worth \$170 million were placed on hold...The 749 trucks delivered since the inception of the program have replaced only part of the existing truck fleet...³⁰⁶

More recently, since 2001 some major achievements have been noted in this sector. The Secretary General report of November 2002 states,

Traffic through the Umm Qasr port in 2001 was 16 per cent greater than in 2000. This affects all sectors because of the quicker discharge of vessels, the faster receipt of program inputs and a reduction in transport cost. The rehabilitation and expansion of railway power capacity and track infrastructure has reportedly resulted in an increase in goods traffic of some 30 per cent in 2001 compared with 2000...The restoration of more affordable public passenger services to urban and suburban communities increases the accessibility of the residents to public medical and social services. Similarly, the public sector goods transport fleet, which plays a key role in the transportation and distribution of program commodities, is undergoing major upgrading, resulting in increased efficiency of distribution and the improvement of some national market conditions.³⁰⁷

The overall health of the population is also obviously largely dependent on procurements and deliveries of items in the medical sector. In the initial phases of the program, the Ministry of Health ordered medicines and medical supplies that increased the availability of life saving drugs in the country.³⁰⁸ However, depleted revenues, inefficiency in ordering, processing and the slow delivery of drugs did not lead to overall improvements in the health sector. Low distribution rates were caused on the one hand by a sudden arrival of a large volume of supplies in the country and on the other hand, by

³⁰⁶ United Nations Security Council, *Review and Assessment of the Implementation of the Humanitarian Program Established Pursuant to Security Council resolution 986 (1995) (December 1996 - November 1998)*, S/1999/481, New York, para.79. 28 April, 1999.

³⁰⁷ United Nations Security Council, *Report of the Secretary General Pursuant to Paragraph 7 and 8 of Security Council resolution 1409 (2002)*, S/2002/1239, New York, para.8.

³⁰⁸ United Nations Security Council, *Review and Assessment of the Implementation of the Humanitarian Program Established Pursuant to Security Council resolution 986 (1995) (December 1996 - November 1998)*, S/1999/481, New York, para.79-80. 28 April, 1999.

the failure of suppliers to ship contracts.³⁰⁹ Delays were also caused by long periods required for quality testing.³¹⁰

More recently some major achievements are starting to be noted particularly in this sector. In general, improvements are noted in the delivery services, increase in surgeries, reductions in some diseases, such as cholera, malaria, measles, mumps, meningitis and tuberculosis, and the eradication of polio since 2000.³¹¹ However, shortages of specific medicines remained because of their potential dual use concerns. Insufficient financial allocations in combinations with the ongoing difficulties of erratic arrival of items also continued and led only to slow improvements in this sector.³¹² Moreover, even though some drugs became more available, control over water-borne diseases did not increase.

In addition, there are other considerations that influence this sector especially. Cross-sectoral influences between all infrastructure sectors and health are identified in the telecommunication, electricity and water/sanitation sectors. The water sector deteriorated rapidly after the implementation of sanctions in 1990. Overall deterioration was due to defective pumps, a decline of the availability of basic chemicals, clogged sewers and a general inability to maintain systems. By the time the OFF was implemented "the quantity of water per person had declined by 40 per cent, and almost one quarter of all tested samples were contaminated."³¹³ Moreover, the Governments of Iraq's OFF program implementation strategy focused on the purchase of chemicals,

³⁰⁹ United Nations, Report of the Secretary General, 150 day report, Phase X, S/2001/1989, 19 November 2001, para. 51.

³¹⁰ United Nations Security Council, *Report of the Secretary General*, Phase VII, 180- days, S/200/520, para. 48, June 2000.

³¹¹ United Nations Office of the Iraq Program, *Note by the OIP*, 12 November, 2002, Para. 70-81.

³¹² *Ibid.* para.11.

pumps, and vehicles to improve the quantity of treated water. However the rehabilitation of the pipe network was not addressed. Even with some increased availability of chemicals and water plant efficiencies and the resulting decline in water contamination a great reduction of water-borne diseases could not be noted immediately. In contrast, in the three northern governorates priority was mainly given to investing in the rehabilitation and maintenance of water networks. These strategies led to noticeable declines in the number of reported water-borne diseases.³¹⁴

However, water and sanitation plants were mainly negatively affected by the lack of spare parts and by the lack of maintenance.³¹⁵ Items urgently needed for repair and rehabilitation were placed on hold by the members of the Iraqi sanctions committee. According to news reports, inconsistencies would further delay the installment of large projects important for the rehabilitation of sectors in general: "for example Iraq was allowed to purchase a sewage-treatment plan but was blocked from buying the generator necessary to run it...."³¹⁶ Moreover, basic repairs of networks are not sufficient in this sector. According to the OIP, solid or partially raw sewage is being discharged daily into the two main rivers of Iraq, which are the main sources of water. This practice not only affects human health, but also the increased pollution of rivers damages the flora and fauna and increases the cost of raw water treatment.³¹⁷

Nevertheless some achievements are noted in this sector especially in the period from Phase XI to XII. According to the OIP, access to portable water has increased

³¹³ United Nations Security Council, United Nations Security Council, *Review and Assessment of the Implementation of the Humanitarian Program Established Pursuant to Security Council resolution 986 (1995) (December 1996 - November 1998)*, S/1999/481, New York, para.84 -87.

³¹⁴ *Ibid.*, para. 90.

³¹⁵ W. Kreisel, "Health Situation in Iraq," Executive Director, WHO Office of the European Union.

³¹⁶ Joy Gordon, "Cool War: Economic Sanctions as a Weapon of Mass Destruction," *Harper's Magazine*, November 2002, p.44.

³¹⁷ United Nations Office of the Iraq Program. *Note by the OIP*, New York, 12 November 2002, para. 102

during this period in the centre/south due to ongoing pipe network rehabilitation, the more regular availability of chlorine gas and bleaching powder and arrivals of alume sulphate.³¹⁸

In the electricity sector, power generation capacities were reduced by 75 per cent during the Gulf War. In the early 90s rehabilitation in this sector was only minimal. Electricity capacities were only restored to 42 per cent of the pre-war capacity. According to the Secretary General report, originally the objective of the program was to repair the existing generators rather than to purchase new ones. Some of these generators, however, were 25 years old. In addition, by 1998, consumer demand for power increased by 21 per cent between 1997 and 1998. As a consequence, power outages increased dramatically from six to ten and twelve hours per day during 1998 and 1999.³¹⁹ The electricity sector was also affected disproportionately by the placement of applications on hold and by a large discrepancy between items ordered and items delivered.³²⁰

The telecommunications sector also had dramatic effect on the overall health situation in Iraq. In June 2000, the Secretary General stated,

telecommunication difficulties continued between central and governorate warehouses, and between warehouses and health facilities. Furthermore, low-capacity computers at central warehouses are insufficient to handle the volume of data, which also hampers observation. Contracts for central warehouse computers remain on hold, awaiting the provision by the Government of Iraq of additional information requested by the [Sanctions] Committee.³²¹

³¹⁸ Ibid., para. 97-100.

³¹⁹ Ibid.

³²⁰ United Nations, *Introductory Statement by Benon Sevan to the Report of the Secretary General Pursuant to Paragraph 6 of resolution 1242*, S/1999/1162, 17 November 1999.

³²¹ United Nations Security Council, *Report of the Secretary General*, June 2000, para 46.

The education sector has often been cited as the most under-funded sector by the Government of Iraq within the program. However, prior to the implementation of sanctions the commitment of the Government of Iraq to this sector was strong. The OFF has only been able to achieve little in this sector. Some achievements, such as the distribution of school desks, the local production of textbooks and the delivery of necessary supplies, are noted. The physical environment of schools remains a major source of concern. Overcrowding, double shifts, low remuneration for teachers, the poor state of hygiene and sanitation, the decline of printing press equipment, the lack of scientific literature and the lack of journals and books create an environment that is, according to the Secretary General, countrywide not conducive to learning.³²² Moreover, the poor education of mothers has been directly linked to the health status of their children.

Several Non Governmental Organizations have also conducted separate assessments of the sanctions in general and the OFF, which go beyond the identification of the weaknesses and strength of the OFF, to include assessments of the broader consequences of sanctions and the program for Iraq. One of these reports has been published in January 2002 by Save the Children (UK): "Understanding Kurdish Livelihoods in Northern Iraq." The report assesses the dependence of Iraqi households, mainly in the north, on the ration system that has been implemented as part of the OFF program and develops a list of consequences that have developed out of the long term implementation of the OFF in Iraq. According to the report, the OFF system has helped to create

³²² United Nations Office of the Iraq Program, *Note by the OIP*, 12 November 2002, para.136-141.

- Chronic poverty by eradicating local economy due to the sanctions and the neglect of this issue in the design of the OFF.

- The OFF ration system has facilitated state domination of the food supply.

The report explains that the rations have allowed the Government of Iraq to reassert its dominance over food systems.

- The OFF system has undermined the development of agriculture in Northern Iraq and has allowed the Government of Iraq to control rations in the north of the country.

The report explains further that, although rations in Kurdistan are distributed by the UN's World Food Program (WFP), the Government of Iraq remains responsible for importing most staples and milling flour. "That means the GOI is able to control the content of the ration; carbohydrate staples and tea and sugar instead of protein – both in Northern Iraq as in the south. Fixed rations inhibit the WFP's ability to target rations at vulnerable groups."³²³

As this analysis has shown, the OFF mechanism is influenced by political interests. These factors are inescapable as long as the Security Council members block substantial reforms to the entire UN system. Since it is, therefore, unlikely that the political motivations of actors can be eliminated in the near future an alternative might be to strengthen the designed of humanitarian exemption programs. The flaws in the design and operation of the program pose serious problems to the improvement of the humanitarian situation in Iraq. These problems exist above and beyond the issues of political interests and revenue availability. It is especially these problems that must be limited in any potential future sanctions cases either of comprehensive or targeted nature.

³²³ Ibid.

Firstly, oil export ceilings limiting Iraq's revenue generation under the OFF in the first three phases, in combination with the initial program start-up problems and the long arrival times for food and medicine items led to only incremental improvements in the early phases.

Secondly, the inability to act upon the Secretary General's recommendations and amend the mechanism of the OFF in a timely fashion, led to long term consequences for the implementation of the OFF. This in addition, to the cross-sectoral implications arising out of holds placed on items by the Iraqi sanctions committee, delayed or non arrival of items and the poor quality of items shipped to Iraq spurred the development of systemic flaws in the OFF's mechanism.

Thirdly, of fundamental necessity remains the generation of revenue under the OFF program. However, this process is also plagued with numerous insufficiencies. Revenue generation under the program is directly linked to the Government of Iraq's willingness to export oil under the OFF. As this study has shown, the ability of Iraq to circumvent revenue generation under the OFF program through oil smuggling, outside OFF trade, and bartering, is assumed to be extensive. At the same time, the precise extend of Iraq's economic activities outside of the program, not benefiting the humanitarian situation, is unknown. Moreover, the OFF system has been used by the Government of Iraq to reward Iraqi allies on the Security Council, with contracts signed by the Iraqi Trade Ministry for those countries. As such the very system has become a tool of political games.

The responsibility of the Government of Iraq in the implementation of the OFF, while of fundamental importance nevertheless remains limited to the distribution of

goods in the centre/south. The Secretary General reports do not explicitly mention problems with the overall performance of the Government in this regard. It is therefore reasonable to conclude that Iraq has been implementing the program in a somewhat reasonable matter. At the same time the ration systems implemented by the Government have helped the Iraqi people, but has also increased the Government's control over food handling.

Fourthly, even though the OFF has been implemented by the UN in the northern governorates, the report as cited above shows that overall living conditions have not dramatically improved in the north as opposed to the south. The distribution and overall management and organization of the programs seem to be better in the north. However, the OFF program in the north has not been able to substantially mitigate the influences of sanctions on the population. As such the design flaws of the OFF prove to be of greater importance than insufficiencies in its implementation.

Fifthly, it is not the absence of goods that has hampered the improvement of the humanitarian situation in Iraq, but the chronic poverty of the Iraqi people due to the sanctions imposed. With the latest changes to the OFF program and the adoption of the GRL list, vast ranges of items are flowing into the country. The eradication of the local economy, however, has left vast numbers of Iraqi's without the means to cover basics for survival. The broadening of the OFF program to allow for more items cannot mitigate the negative influences of the sanctions imposed. This however, is proclaimed to be the primary objective of the OFF program.

As this study has shown, flaws in the design of the OFF and the difficulties encountered in its implementation have only allowed the program to achieve its objective

in limited ways. The consequence of the actions of the Government of Iraq, in combination with the design of the sanctions regime imposed by the UN Security Council, the delayed implementation and poor design of the OFF program, in addition to the political influences on the program and the funding shortfalls, continue to influence negatively primarily the living standards of the Iraqi people.

Chapter VI: Conclusion and Recommendations

This thesis has outlined the main mechanism of the OFF program and has highlighted some of its main constraints. These constraints include the OFF dependence on political actors, the lack of sufficient funding for the implementation of the program, due among other reasons to its exclusive dependence on the international oil market, inefficient management, poor organization and various procedural shortcomings.

This research concludes that the OFF has been able to arrest some of the initial negative influences of the sanctions on the population, while falling far short of improving the lives of ordinary Iraqis over a period of eleven years of sanctions. The UN insists that "the humanitarian program was never intended to be a substitute for normal economic activity...." This begs the question of "what then is the objective of a humanitarian program that was supposed to be temporary, but has now entered its seventh year of implementation in a country targeted by comprehensive sanctions?"

As this study has shown, the main constraint of the OFF program arises out of its inherent connection and contradiction between the humanitarian exemption program and the comprehensive sanctions imposed on Iraq. Because of this inherent connection it has been very difficult to take the political interests of actors out of the implementation of the OFF program. The members of the Iraqi sanctions committee and the Government of Iraq are main actors in the implementation of the OFF. Each actor has its interests and its means to achieve these. The Government of Iraq's primary interest is the circumvention of the sanctions at large. The circumvention of the sanctions is further spurred by the commercial and political interests of neighbouring and other states. Moreover, the political and commercial interest of individual states on the UN Security Council, either

limit the strengthening of the sanctions at large or inhibit the improvement of the OFF program. The political interests of the US and the UK stand in contradiction to the necessary improvements to the OFF mechanism that are needed to develop Iraqi infrastructure and economy and to allow for better humanitarian standards. The various political and commercial interests of actors, therefore, directly influence the OFF program.

Beyond the interests of political actors the program also has fundamental design flaws. The brief chronology in this study has shown that the OFF has been expanded and amended in some ways throughout the years. Originally, Iraq's exports under the OFF were limited and only a narrow range of exemptions were allowed into the country. Presently, Iraq has no export limits under the OFF and a wide variety of items and commodities are entering Iraq under the OFF program. At the same time, some changes to administrative procedures have been implemented. However, positive influences of these amendments on the general humanitarian situation and for the vast majority of people seem to be only minimal. Even though some improvements to the procedural shortcomings have been implemented, the dependence on political actors to amend the program has only led to superficial changes and has influenced the program's ability to amend itself. The United Nations Secretariat and the Secretary General are only able to recognize, identify and report problems to the Iraqi sanctions committee or the Government of Iraq. However, they have no authority to act upon problems or to enforce solutions to them. Firstly, this dependence leads to in abilities in the implementation of improvements in a reasonable time frame. Time frames in which improvements are implemented are too long and not conducive to substantial change. Secondly, this

dependence leads to the program's inability to amend itself. As the study has shown, in many cases improvements do not take place at all even though they are recommended to either the Iraqi sanctions committee or the Government of Iraq.

As the study has shown further, the second major constraint of the OFF program lies in its total dependence on the volatile international oil market. This is connected to the design of the sanctions regime implemented on Iraq, which prohibits the Government of Iraq to legally create revenue to allow for some 'normal' economic activity. This has led also to the erosion of the support of sanctions by members of the international community and has allowed the Government of Iraq to create ways to circumvent the sanctions. Consequentially revenue generation under the OFF program has suffered. Moreover, as the OFF was expanded to allow for the delivery of more items into Iraq, fundamental shortcomings of the program, such as the lack of foreign investments and local economic growth opportunities have not been dealt with. The OFF has therefore not been able to mitigate the severe damages caused to the Iraqi economy by the sanctions.

The study identifies as a third major constraint the complexity of the OFF program. The OFF program is in large part dependent on effective administration and communication procedures. It is also dependent on large numbers of international and national personnel and the effective coordination of several United Nations departments at the UN headquarters and in the field, the private sector, the Iraqi government and the Iraqi private sector. The majority of the coordination of the work-load, however, seems to lie with the Office of the Iraq program, which has been understaffed and most likely under-funded since it is entirely funded by the oil revenue created by the sale of Iraqi oil

under the OFF. In addition the OIP was only created in October 1997. It is assumed that before its creation the coordination of the OFF was the responsibility of the Humanitarian Coordinator in Iraq. Moreover, as the United Nations states, the OFF program has been the largest humanitarian exemption program ever implemented. The Secretariat had therefore only limited *prior* experiences with a program of this nature that is not a traditional aid program.

Secretary General Kofi Annan stated in 1998 the clear need for mechanisms that limit the influences of sanctions on the civilian population. Only limited research has developed since then that exclusively emphasizes the need for improvement of humanitarian exemption programs. Most scholarship emphasizes the improvement of sanctions in studies. Humanitarian exemption programs are viewed as an integral part of the greater research on sanctions. More recent scholarship has been developing the concepts of smart and/or targeted sanctions with the objective to mitigate some of the financial hardships caused by sanctions. However the present scholarship on targeted and smart sanctions neglects the importance of humanitarian exemption programs. Only rudimentary steps have been taken in this regard to deepen the research on humanitarian exemption programs.³²⁴ According to a report for the OCHA,

...accepted in theory, the framing and management of humanitarian exemptions has varied widely. Generally such exemptions are authorized from the outset in the same resolutions which impose sanctions: sometimes they are inserted later or modified over time. No generic exemptions language currently exists that is routinely incorporated into sanctions resolutions, nor, more fundamentally, does any generally accepted definition exist of what is understood to be "humanitarian."³²⁵

³²⁴ United Nations Office for the Coordination of Humanitarian Affairs, Claude Brunstein, Special Advisor, OCHA, *Coping with Humanitarian Impact of Sanctions: An OCHA Perspective*, New York, <http://www.reliefweb.int/ocha_ol/pub/sanctions.html>. Also see, *Towards More Humane and Effective sanctions Management: enhancing the Capacity of United Nations System*, Chapter 3, Humanitarian Exemptions.

³²⁵ United Nations Office for the Coordination of Humanitarian Affairs, Cortright et al. *Towards more Humane and Effective Sanctions Management: Enhancing the Capacity of the United Nations System*, New York, OCHA-Online.

In-depth field research, in addition to theoretical and methodological research, is missing in the present literature and is needed.

This study concludes therefore, that research is needed that especially analyzes the constraints of humanitarian exemption programs. Main areas that can be identified for further research are,

- Clarification of the objectives of humanitarian exemption programs.
- The development of possible blanket exemption lists.
- Detailed studies and analysis of goods review lists and dual use items.
- The development of processes that outline controlled foreign investments as part of humanitarian exemption programs.
- The development of clear guidelines to promote local economic opportunities facilitated through humanitarian exemption programs.
- The development of clear guidelines to allow for internal amendment processes of humanitarian exemption programs.

Moreover, humanitarian exemption programs are often designed as temporary measures only. In the case of the OFF program planning cycles are limited to 180 day phases.³²⁶ The establishment of clear guidelines and objectives for short-term, medium-term and long-term humanitarian programs must be established taking into consideration the economic impact of targeted and comprehensive sanctions. This research would bring together a wide variety of sources such as NGOs, UN departments, and military experts.

In the specific case of the OFF program, the analysis has shown that retaining the basic sanctions regime while trying to correct some of its apparent defects has been

³²⁶ United Nations Office of the Iraq program, *Note by the OIP*, 12 November 2002, para.198.

unsuccessful. This study concludes, therefore, that the basic structure of the sanctions regime must change to allow for the possibility for the resumption of some normal economic activity in Iraq. This could be achieved by allowing for the export of items other than oil. As the study mentioned, donations and gifts are entering Iraq through resolution 661 and 687. Development and clarification of these procedures might help to create ways that would allow for the implementation of substantive changes to the sanctions regime. The OIP has also suggested that items entering under resolution 661 and 687 should be brought under the provisions of resolution 1409 (2002).

Moreover, self-assessment strategies must be implemented into the design of the OFF program. The authority of the staff involved in the implementation of the OFF must be strengthened. First steps were taken with the implementation of resolution 1409 (2002) in an effort to minimize the influence of the Iraqi sanctions committee members and enhance the authority of the Office of the Iraq Program within a framework that remains acceptable to the Security Council members.

This study concludes further that it is also through the strengthening of humanitarian exemption programs that the tool of sanctions to force compliance in International Relations can be strengthened. The adaptation of clear guidelines and policies for the implementation of humanitarian exemption programs would lead to a body of knowledge that could be used as a basis for a more structured approach toward sanctions in general. Based on the analysis in this study the following recommendations are made:

- Multiple ways of funding must be available for the administration of humanitarian programs: These must include the donor international community, the targeted country and other sources of possible income,

such as limited economic activities within the country and/or limited foreign investments that allow the targeted country to create revenue through multiple avenues.

- The need for the standardization of basic procedures for the implementation of humanitarian exemption programs and the standardization of administrative processes in the implementation of humanitarian exemption programs
- The development of clear and defined objectives of short-term, medium-term and long-term exemption programs.
- The standardization of basic procedures to be followed by the targeted state for the procurement of any items that are exceptions to sanction regimes.
- The creation of standard humanitarian blanket lists.

To conclude, this study is a necessary first step in the improvement of the mechanism of humanitarian exemption programs with the primary objective to improve the humanitarian situation of civilian populations in countries targeted by sanctions. At the same time this study is committed to the strengthening of the tool of sanctions in International Relations.

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