

United States' Foreseeability, Awareness and Knowledge of the Consequences of the Sanctions Against Iraq

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In order to determine to which extent individual leaders who imposed and maintained economic sanctions against Iraq can be held responsible for the adverse consequences of their acts, including massive child mortality, it is important to determine the extent to which these persons had been aware of the foreseeable consequences of their decisions and informed about such consequences as the sanctions unfolded. The question of knowledge (or awareness) is an important element in determining the existence or absence of a culpable intent, particularly when an actor denies having intended the adverse consequences of his acts. A general, though rebuttable, presumption in law is that a person intends the foreseeable consequences of his acts. As will be seen below, the US administration possessed adequate data to predict the adverse consequences of the sanctions on Iraq before they were imposed, was informed of the consequences as they unfolded, and was kept informed on these consequences all along the sanctions' period. Not only was the US administration aware of these consequences, but it was determined to cause severe hardships in Iraq, as a means to force the compliance of the Iraqi government with the will of the U.S. administration, as reflected in Security Council resolutions. The question whether other governments shared the U.S. administration's foreseeability, awareness and knowledge of the consequences of the Iraq sanctions – and the same intent to cause hardships - will not be dealt with in the present study.

1. Knowledge as a mental element in criminal law

The concept “knowledge” which is “absorbed either by intent or by recklessness” in civil law countries, has entered international criminal law as a distinct mental element, along intent. Cassese explains:

depending on the *contents of the substantive penal rule* at stake: (i) if the substantive penal rule prescribes the existence of a *particular fact or circumstance* for the crime to materialize, knowledge means awareness of the existence of this fact or circumstance; (ii) if instead the substantive criminal rules focuses on the *result of one's conduct*, then knowledge means (a) awareness that one's action is most likely to bring about that harmful result, and nevertheless (b) taking the high risk of causing that result.[1]

A typical example of an international rule focussing on the second form of knowledge, namely that linked to result, is found in Article 85(3)(b) of the First Additional Protocol.[2] According to that provision “launching an indiscriminate attack affecting the civilian population or civilian objects *in the knowledge* that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects”, would amount to a grave breach of the Protocol (emphasis added).

1 Antonio Cassese, *International Criminal Law*, Oxford University Press, 2003, p. 164, emphasis in the original

2 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. at <http://www.icrc.org/ihl.nsf/ff3d1abd6ef26cca41256739003e636c/d9e6b6264d7723c3e12563cd002d6ce4?OpenDocument>

The concept of knowledge is defined in various countries' legal statutes. As an example, the Criminal Code of the State of Maine (USA) defines knowledge as follows:

A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

A person acts knowingly with respect to attendant circumstances when he is aware that such circumstances exist.[3]

In the Rome Statute of the International Criminal Court it is stipulated (Art. 30(2)) that *knowledge* "means awareness that a circumstance exists or a consequence will occur in the ordinary course of events"

While the Rome Statute does not mention "recklessness" as one of the forms of culpable mind, Cassese holds that the second form of knowledge, as defined above, "substantially coincides with recklessness" as a distinct form of intent.

The concept of recklessness (*dolus eventualis*) is defined by Cassese as "a state of mind where the person foresees that his action is likely to produce its prohibited consequences, and nevertheless takes the risk of so acting." [4] Recklessness is thus related to foreseeability of a likely result.

A representative definition of "recklessness" found in United States' Penal Codes is the following (also from the Maine Criminal Code):

A. A person acts recklessly with respect to a result of his conduct when he consciously disregards a risk that his conduct will cause such a result.

B. A person acts recklessly with respect to attendant circumstances when he consciously disregards a risk that such circumstances exist.

C. For purposes of this subsection, the disregard of the risk, when viewed in light of the nature and purpose of the person's conduct and the circumstances known to him, must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation.[5]

Other terms relating to "knowledge" invoked by courts are "wilful blindness", "closing one's mind to a circumstance or to a result" and "foreseeability".

Arguing the foreseeability by Iraq of the consequences of its invasion and occupation of Kuwait in 1990 – and thus Iraq's obligation to provide reparation - Rovine and Hanessian write:

[F]oreseeability is firmly rooted in the municipal law experience not only of common-law countries, such as the United States and the British Commonwealth states, but also Germany, Russia, the Netherlands, Poland, Denmark, and Argentina. Concepts of foreseeability inform criminal law, contracts, and torts.[6]

3 Maine Criminal Code Title 17-A §35, at <http://janus.state.me.us/legis/statutes/17-A/title17-Asec35.html>

4 *Id.* p. 168

5 Maine Criminal Code, see *supra* n. 3

6 Arthur W Rovine & Grant Hanessian, *Toward a Foreseeability Approach to Causation Questions at the UNCC*, in The United Nations Compensation Commission [Thirteenth Sokol Colloquium]. (Richard B, Lillich ed.) Transnational Publishers, Inc., Irvington, New York, pp. 235-255 (1995)

2. The applicability of the notion of foreseeability, awareness and knowledge to the imposition of economic sanctions against Iraq

In order to determine whether those who imposed and maintained economic sanctions against Iraq possessed the requisite knowledge, could foresee the consequences of their acts in order to avoid causing unjustified harm to civilians, or knew of these consequences as the sanctions unfolded, the following questions will be addressed:

- (1) Were the sanctioning parties in a position to foresee the adverse consequences of the sanctions?
- (2) Did the sanctioning parties actually foresee the consequences of the sanctions?
- (3) Were the sanctioning parties put on notice regarding the consequences of the sanctions?
- (4) Did the sanctioning parties admit awareness of the adverse consequences of the sanctions?

The present inquiry is limited to US decision-makers because the United States has been the leading proponent of economic sanctions in general and on Iraq in particular. Notwithstanding the limited nature of this inquiry, its utility consists in demonstrating the feasibility in determining knowledge (awareness) of actors who over a long period pursue policies that cause massive harm to a civilian population.

(a) Foreknowledge: The period before the imposition of the Iraq sanctions

Merely hours after the invasion of Kuwait by Iraqi forces, in the early hours of 2 August 1990, the President of the United States declared a “national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States” posed by that invasion and issued two executive orders, imposing a unilateral U.S. embargo on trade with Iraq and freezing Iraqi financial assets in U.S. banks.[7]

Could the US administration on 2 August 1990 have foreseen the adverse consequences of the sanctions?

It is not clear whether US President George Bush acted on the spur of moment on the night of 2 August 1990 or whether he and his assistants were already set to impose an unilateral embargo on Iraq before the news of the Iraqi invasion reached Washington.[8] It has been argued in some quarters that the US actually induced Iraq to invade Kuwait by urging Kuwait to provoke Iraq and by sending mixed signals to Iraq’s President, Saddam Hussein.[9] The speed with which the US President had drafted an executive order detailing the legal measures to be imposed on Iraq and secured the passing of a detailed Senate resolution on the same day[10] supports, in any case, the hypothesis that the US was expecting and secretly welcoming Iraqi invasion of Kuwait, as a pretext to smash Iraq.[11]

7 Executive Order 12722 of 2 August 1990, at <http://www.ustreas.gov/offices/enforcement/ofac/legal/eo/12722.pdf> and Executive Order 12723 of 2 August 1990, at <http://www.uhuh.com/laws/donncoll/eo/1990/EO12723.TXT>

8 According to Ramsey Clark (see *infra* n. 9) Senator John Kelly helped draft proposals for sanctions against Iraq for Congress as early as in April 1990 (p. 21).

9 Ramsey Clark, former U.S. Attorney-General, in *The Fire This Time: U.S. War Crimes in the Gulf* (Thunder’s Mouth Press, New York, 1992) provides evidence to support these allegations, see pp. 12-24: see also William Blum, *Killing Hope, U.S. Military and CIA Interventions Since World War II*, Common Courage Press, Monroe (Maine), 1995, Chapter 52: Iraq 1990-1991, pp. 320-337, also at <http://members.aol.com/bblum6/iraq2.htm#end>

10 Senate Resolution 318 – Relative to Iraq’s Invasion of Kuwait (Congressional Record, page S11961)

11 If the U.S. administration expected the invasion, it is significant that the U.S. did not take any decisive measure to dissuade Iraq from that act. If the U.S. administration, on the other side,

What can be said with certainty, however, is that the United States possessed on 2 August 1990 sufficient detailed intelligence on Iraqi infrastructure, agriculture, industry, commerce, foreign trade, employment and social conditions, to predict the likely consequences of disrupting Iraqi foreign trade and freeze Iraq's foreign assets. Apart from classified information possessed by various US government agencies, to which the author obviously has no access, the following account illustrates a number of public web sites which contain documents on US global economic intelligence:

- According to Section 2202 of the Omnibus Trade and Competitiveness Act of 1988, the U.S. State Department “shall [...] each year, prepare and transmit” to various Congress Committees “a detailed report the economic policy and trade practices of each country with which the United States has an economic or trade relationship.” On the State Department's web sites, a wealth of information on the economy of most countries can be found[12].
- The CIA maintains a public “world fact book” on all countries, which includes geographical, demographic, political, economic, social, industrial, financial and other details.[13]
- The US Defence Department maintains a public information base entitled Country Studies Series. This Series “presents a description and analysis of the historical setting and the social, economic, political, and national security systems and institutions of countries throughout the world and examines the interrelationships of those systems and the ways they are shaped by cultural factors.” As of this writing, 102 countries and regions are covered.[14]
- The US Department of Energy publishes online Country Analysis Briefs regarding most countries' energy sector.[15]

The level of detailed knowledge accessible internally to US decision-makers with regard to foreign countries can only be surmised from incidental revelations, such as the report on Iraq Water Treatment Vulnerabilities produced by the U.S. Defence Intelligence Agency (DIA) shortly before the Gulf war.[16] This report, partly declassified in 1995 and discovered by Prof. Thomas Nagy,[17] contains extremely detailed information on the technology used by Iraqi water treatment facilities, the chemicals used for water purification and the ability (or inability) of Iraq to produce or import such chemicals. The report also indicates the foreseeable effects from incapacitating Iraq's water treatment system on public health,

was truly surprised by the invasion, it is difficult to explain how the U.S. could draft within hours detailed legislation on sanctions against Iraq. According to John Pilger, reporting in the *New Statesman*, 8 February 1991, the U.S. National Security Council presented in May 1990 a white paper to President Bush describing Iraq and Saddam Hussein as ‘the optimum contenders to replace the Warsaw Pact’ as the rationale for continued Cold War-level military spending (cited by Ramsey Clark, *supra* n. 9, p. 23)

12 See following web sites: <http://www.state.gov/e/eb/rls/rpts/eptp/2001/> and

http://www.state.gov/www/issues/economic/trade_reports/index.html

13 <http://www.odci.gov/cia/publications/factbook/index.html>

14 <http://lcweb2.loc.gov/frd/cs/cshome.html>

15 A current Country Analysis Brief on Iraq is found on

<http://www.eia.doe.gov/emeu/cabs/iraq.html>

16 Iraq Water Treatment Vulnerabilities, 18 January 1991, Key Judgments, From: DIA Washington D.C./ Via: NMIST NET/ To: CENTCOM/ Info: CENTAF, UK Strike Command, Marcent, 18 ABC, Navcent, Soccent, 7th Corps, Ankara.

http://www.gulfink.osd.mil/declassdocs/dia/19950901/950901_511rept_91.html

17 Thomas J. Nagy, *The Secret Behind the Sanctions: How the U.S. Intentionally Destroyed Iraq's Water Supply*, *The Progressive*, September 2001, <http://www.ratical.org/ratville/CAH/UScahIraq.html#fn1>

including epidemics, and on Iraqi industry. The importance of this document warrants extensive quotations from that report:

1. Iraq depends on importing specialized equipment and some chemicals to purify its water supply, most of which is heavily mineralized and frequently brackish to saline.
2. With no domestic sources of both water treatment replacement parts and some essential chemicals, Iraq will continue attempts to circumvent United Nations sanctions to import these vital commodities.
3. Failing to secure supplies will result in a shortage of pure drinking water for much of the population. This could lead to increased incidences, if not epidemics, of disease and to certain pure-water-dependent industries becoming incapacitated, including petro-chemicals, fertilizers, petroleum refining, electronics, pharmaceuticals, food processing, textiles, concrete construction, and thermal power plants.

[...]

7. The minerals in [Iraqi] water include concentrations of carbonates, sulphates, chlorides, and, in some locations, nitrates. Drinking heavily mineralized water could result in diarrhoea and, over the long term, stones forming within the body. For industrial applications, pipes and other equipment would scale (become encrusted), eventually causing plants to shut down. Scaling in boilers would cause explosions if not prevented or removed.

8. Much of Iraq's ground water supplies are brackish to saline. The large reservoirs near Baghdad – the Tharthat, Habbaniya, and Al-Milh lakes – are saline. Since these lakes serve as catch basins for floods on the Tigris and Euphrates rivers, the Iraqis must reduce the water volume in the lakes during the low-water season [...]

11. Iraq's rivers also contain biological materials, pollutants, and are laden with bacteria. Unless the water is purified with chlorine, epidemics of such diseases as cholera, hepatitis, and typhoid could occur.

12. Water treatment regimes. Water treatment is specific to the impurities of the water treated and to the application for which the water will be used. The basic process requires clarification (removing suspended solids), filtration, and, for drinking and some industrial uses, purification. In Iraq, the process also includes desalinating and water softening.

13. Clarification requires adding flocculants and coagulants to the water. The Iraqis use aluminum sulphate, although iron sulphates are acceptable to bind the suspended solids into clumps for settling. If not removed, the sediments, or sludge, would clog the filtration system (probably sand) and shut down the water purification plant until the clogs were removed. Aluminum sulphate supply levels are known to be critically low, since Iraq tried and failed to obtain precursor chemicals from Jordan for its manufacture.

14. Chlorination normally is accomplished during several stages of purification, including the initial treatment stage to prevent the equipment from liming and to kill pathogens just prior to storing the fully treated water. The chlorine used in most plants is either sodium hypochlorite, a liquid, or calcium hypochlorite, a powder. If they are equipped with injectors, low-capacity plants can use chlorine gas directly. Iraq's plant in Falluja and the PC-I petrochemical plant at Basrah produce sodium hypochlorite and, as a by-product, caustic soda, which is used to adjust the pH of water supplies. Normally, both locations produce relatively small quantities of chlorine for industrial and some municipal use; chlorine for municipal supplies also is imported. Recent reports indicate the chlorine supply is critically low. Its importation has been embargoed, and both main production plants either had been shut down for a time or have been producing minimal outputs because of the lack of imported chemicals and the inability to replace parts. Previously when supplies were low, the Iraqis have stopped chlorinating the drinking water, but only for short periods. To retard algae growth, which could clog pipes, copper sulphate normally is added to the water. But this practice has not been verified in Iraq, and supplies of copper sulphate are unknown. Sulfuric acid typically is added as well, but Iraq probably can produce sufficient supplies.

15. Iraq apparently uses lime, at least at the new Karkh treatment plant, to soften water. The lime precipitates colloidal carbonate impurities from the water. Soda ash and zeolites also normally are used to remove non-carbonate mineral impurities, but

their use in Iraq has not been determined. Local companies sell bottled soft water in Iraq, suggesting that municipal water systems do not normally soften water. Iraq should have no shortages of lime. However, the lack of softening chemicals reportedly has incapacitated the bottled soft-water industry.

16. Between 1982 and 1990, some Iraqi industries installed reversible ion exchange electro dialysis membrane systems, obtained from an American source, to soften and desalinate water. The membranes last 5 to 7 years and do not require chemical pre-treatment of the water. They normally serve smaller volume requirements. However, a major oil refinery, Al-Daura in Baghdad, installed this system in 1985, and it produces 24,000 cubic meters of purified water per day.

17. About one quarter of all Iraqi water supplied for industrial and human consumption requires desalinization. Iraq relies almost exclusively on ion exchange or reverse osmosis systems rather than multistage flash units. Ion exchange and reverse osmosis membranes are specific to the type of equipment of which they are a component, as are the chemicals required. Previous Iraqi use of substitutes has not been satisfactory. Iraq reportedly depends on imported membranes and imports chemicals from several sources. Iraq had not completed the major purchase and delivery of spare membranes before invading Kuwait. Attempts to procure membranes since the UN sanctions were imposed have failed. Since the attempt to import membranes corresponded to their normal replacement period, Iraq apparently did not stockpile abundant spare membranes or chemicals and probably had no more than a 2-month supply prior to the invasion.

The ostensible purpose[18] of the above report was to assess the vulnerability of Iraq's water treatment system to measures of incapacitation, such as outright destruction by bombing and an embargo on spare parts and supplies. It should be mentioned that the report was sent, *inter alia*, to forward command units just before the Gulf war of 1991. From the details revealed in this report one can surmise that they were not obtained hastily but had been collected by US intelligence agencies over a long period. It is thus reasonable to assume that US decision-makers had access to equally detailed data on other sectors of Iraq's economy, such as the oil industry, employment, food security, communications and the health system – that could easily be affected by disrupting international trade and financial flows.

(b) Members of Congress knew what consequences could be expected from the sanctions on Iraq

In the months ensuing the imposition of the Iraq sanctions, debates were held in the U.S. Senate and in the House of Representatives regarding these sanctions.

As will be shown below, some of the testimonies demonstrate not only an awareness of the expected consequences of the sanctions but reveal an intent to cause such consequences, whereas in other testimonies the very awareness of the likely consequences led the respective legislator to oppose the sanctions as inhuman.

Regarding the vulnerability of Iraq to the disruption of international trade, Senator Sanford warned on 16 October 1990:

If the United States makes wise decisions, the embargo against Iraq can last as long as it need last--for 6 months or 6 years, or until Iraq is reduced to an agrarian society. The U.N. embargo against oil export cuts off Iraqi income and destroys the Iraqi economy.[19]

18 The Defence Intelligence Agency (DIA) has not revealed who originally commissioned this report, for what purpose it was written, who were the report's authors and who ultimately used the findings of this report.

19 Senate, 16 October 1990, at S15323

An illustration of the rhetorical means used to mask the inhuman nature of the sanctions was provided by the same person a few weeks earlier. On 2 September 1990 he said:

What are those sanctions? Well, those sanctions require certain action but, primarily, *we are saying to Iraq* : you cannot sell any of your products, you cannot sell any oil; not only can you not sell the oil that you took from Kuwait but, as a penalty for taking it, you cannot sell any of your own oil.

So *we are saying to that country* in effect: We have cut you off from any income; you are not going to have any income until you meet the conditions that the United Nations has set down or has yet to set down.[20]

The italicized propositions above are absurdities, for it is impossible to say something to an abstraction such as a “country”. One can only say something to human beings. By translating the second proposition into ordinary English, the brutality of the message can be revealed: “[...]So *we are saying to the people who live in Iraq*: We have cut you off from any income; you are not going to have any income [and you won’t therefore be able to buy food, and live like human beings] until *your government* meets the conditions the United Nations has set down or has yet to set down”.

Senator Moynihan warned during a Senate debate on 24 September 1990:

Let there be no doubt that the embargo against Iraq can bring about tremendous disruption short of starvation, and do so lawfully. It is within the power of the U.N. resolutions to wreck that economy and devastate that society....

We are already enforcing a total embargo on Iraq. Although conditions may reach such an extreme that humanitarian relief is ultimately allowed under strictly controlled circumstances, it is entirely possible, even likely, that the embargo will endanger (sic) tremendous human suffering. To say again, an embargo which cuts off food, causes massive unemployment and paralyzes Iraq's economy is not an example of a ‘kinder, gentler’ diplomacy.[21]

Five months after the imposition of economic sanctions on Iraq and a few days before the initiation of the allied bombing campaign against Iraq (Gulf war), a long debate took place both in the U.S. Senate and the House of Representatives on the Iraq issue. In that debate numerous legislators commented on the effects of the sanctions, displaying thereby their awareness of these effects.

In a letter dated 10 January 1991 from William H. Webster, Director of the CIA, to Les Aspin, Committee on Foreign Affairs of the House of Representatives, presented at the Senate debate on 12 January, Webster wrote:

UN sanctions have shut off nearly all Iraq's trade and financial activity and weakened its economy, but disruptions in most sectors are not serious yet. The impact of sanctions has varied by sector. The most serious impact so far has been on the financial sector, where hard currency shortages have led Baghdad to take a variety of unusual steps to conserve or raise even small amounts of foreign exchange. For the populace, the most serious impact has been inflation. (...) The economic impact of sanctions is likely to be increasingly serious, with conspicuous hardships and dislocations. (...) We have seen little hard evidence to suggest that Saddam is politically threatened by the current hardships endured by the populace.[22]

20 Senate, 27 September 1990, at S14040

21 Senate, 24 September 1990, at S13541-4

22 Senate, 12 January 1991, at S411

In that letter the CIA (a) acknowledged the *mechanism* by which the infliction of hardships on the population is expected to yield government compliance;^[23] and (b) expressed his expectation of an “increasingly serious” impact of the sanctions, including “conspicuous hardships and dislocations”. He did not dwell, however, on the details of these hardships and dislocations.

Representative Scheuer, basing himself on hearings held by the Joint Economic Committee in December 1990, emphasized the vulnerability of the Iraqi economy to economic sanctions, their extremely severe nature and expressed his belief - and hope - that they will “destroy the Iraqi economy”^[24] He added later that the sanctions are “shrinking the Iraqi economy by a rate 20 times the average rate of sanctions when applied to countries in a way that worked quite well.”^[25]

To emphasize the enormous losses already incurred by Iraq, Representative Leach said:

In an economic sense, the sanctions appear to be having an effect [...] Saddam has been deprived of roughly \$1.5 billion of foreign exchange earnings monthly, about equal to a third of Iraq's total national product. Iraq's financial holdings and line of credit abroad have been frozen, and Baghdad has no access to Kuwait's international holdings.^[26]

Displaying acquaintance with Iraq’s vulnerability, Representative Leach added:

Iraq's economy would appear to be unusually exposed to sanctions as a form of coercive diplomacy. It is dependent on oil for 95 percent of its exports, and is dependent on imports for 30 percent of its GNP. Moreover, Iraq imports as much as two-thirds of its peoples' normal caloric intake, over 70 percent of grain consumption, and over 90 percent of sugar and vegetable oils.

According to one congressional study, Iraq may well deplete its available foreign exchange reserves by this spring, leaving it little hard currency with which to entice large-scale smuggling. With the welfare of Iraqis reduced to an amount equal to 48 percent of its GNP, and with little access to key imports, Baghdad will probably be compelled to shut down many of its productive facilities in order to keep militarily critical enterprises functioning.^[27]

Expecting that the consequences of the sanctions might cause a backlash by “important constituencies of the Arab world”, Senator Bradley urged the United States to let other countries, particularly Arab ones, participate in enforcing the sanctions:

Sanctions are being applied by many other countries. The undeniable suffering they will cause would be the shared responsibility of the entire international community that imposed them, including all of Iraq's Arab neighbours who are most directly responsible for enforcing them. If we continue to help enforce sanctions, and deter further aggression with firm and patient determination, we would minimize the risks of rejection, ostracism, and terrorist reprisals by important constituencies of the Arab world.^[28]

He added:

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- 23** A number of Senators and Representatives refer to this mechanism. See, for example, Sen. Alfons d’Amato 11 Jan 1991, at S233; or Rep. Lloyd, 7-II, 11 Jan. 1991, at H464, doubting that the hardships experienced by the Iraqi people will force Saddam Hussein from Kuwait.
- 24** House of Representatives, Debate on Iraq, 10 January 1991, at H141
- 25** *Id.* at H174
- 26** *Id.* at H184
- 27** *Id.*, at H187
- 28** Senate, Debate on Iraq, 10 January 1991, at S135

I prefer, for now, to *strangle Saddam Hussein* with economic sanctions which cost less in terms of American lives and dollars than would a massive military invasion that costs thousands of American lives, billions of additional taxpayer dollars, and endangers our long-term vital interests in the region[29] (emphasis added)

On January 10, 1991, Senator Pell recognized the enormous damage already inflicted on the Iraqi economy but did not mention what that meant for the ordinary Iraqi:

As a result of the U.N. sanctions, Iraq can sell no oil. It can perform no financial transactions. Iraq's gross national product has fallen between 40 and 50 percent in just 4 months. There is also in place a virtually total ban on imports. Without spare parts, imported inputs, and foreign technicians, Iraq cannot operate most of the expensive infrastructure that it purchased in the oil boom years of the 1960's and 1970's. Iraq cannot manufacture tires for its transport.[30]

In the same debate Senator Moynihan proposed another means to “cause chaos” in Iraq by flooding the country with fraudulent currency:

They even import their currency. Mr. President, here is a dinar. It is a handsome piece of currency. It is printed in London. The Iraqis do not have the technology to print their own paper money. The dollar bill, which is high-quality paper currency, lasts about 18 months. In fact, this will not last about that long. Pretty soon there will not be any more paper currency left in Iraq. Just start there. We could print up a lot and drop it from airplanes and cause chaos that way. The options are infinite with respect to a country as isolated as this.[31]

In the House of Representatives, Representative Moody dismissed the views of those who said the sanctions weren't “working”. On the contrary, he said:

By all accounts they are having a terrible toll on the economy and society of Iraq . Yes, Saddam Hussein is still eating well, but that is not the issue. The point is that the economy of that country has been dealt a devastating blow by the sanctions .

We in America are worried about a perhaps 1-percent or 2-percent drop in our GNP over the next year. *They* have received at once a 50-percent cut in GNP in that country. Imagine the chaos which would ensue if anything approaching that would happen here.[32]

Other Congressmen insisted that the sanctions “create economic pain”,[33] “strangle the Iraqi economy”,[34] “crippling”[35] or “eviscerating”[36] it, or that they “may inflict sufficient pain that the Iraqi people will overthr[o]w Saddam”.[37] The terms “causing pain, crippling, strangling, eviscerating”, designate physical attacks on human beings. Their use in this context indicates an intent to cause severe harm.

Those Senators who wished to use force rather than wait for the sanctions to have effect, warned that a

29 *Id.* at S136

30 *Id.* at S125

31 *Id.* at S109

32 House of Representatives, 10 January 1991, at H149

33 Sen. Daschle, 11 Jan 1991, at S171

34 Sen. Metzenbaum, 11 Jan 1991, at S236

35 Sen. Rockefeller, 12 Jan. 1991, at S393

36 Rep. Synar (House of Representatives debate), 11 Jan. 1991, at H281

37 Sen. Pell, 12 Jan. 1991, at S374

protracted sanctions policy means mass starvation in Iraq [...], not among those responsible for perpetrating hostilities but among the most innocent civilians.[38]

The above account demonstrates that US legislators had at the time of the debate a fairly good idea of the ongoing and likely effects of the sanctions in terms of human sufferings, even if some of them attempted to mask their awareness by implying that Saddam Hussein would be the main victim. The debate put the US administration on notice regarding the ongoing and likely consequences of maintaining the sanctions.

Notwithstanding what transpired in Congressional debates, the US administration was well informed about the ongoing consequences of the sanctions on the Iraqi economy and on the daily lives of the Iraqi population. On 31 October 1990, Margaret Tutwiler, spokesperson of the U.S. State Department said that

imports [from Iraq] of industrial goods, foreign raw materials, semi-finished goods, and machinery have been reduced by 90 percent to less than 10 percent of pre-gulf crisis levels....Shortages of imported lubricants [into Iraq], spare parts and chemicals are hampering machine operations and causing production difficulties at refineries, petrochemical plants and other industrial sites...The department estimates that some 97 percent of Iraq's oil exports have been stopped, along with a reduction of some 90 percent in Iraq's imports of industrial goods...While food is still readily available, Baghdad is rationing basic commodities such as bread, sugar and soap. The cost of some basic commodities has jumped over 800 percent,[39]

Margaret Tutwiler not only described some of the reported consequences but revealed the underlying philosophy of economic sanctions, namely that the imposition of hardship on the civilian population in Iraq is regarded by the US administration as a means to coerce the Iraqi government. As reported by Edmund F. Scherr, USIA Diplomatic Correspondent:

Stressing that the intent of the sanctions is to "change the behavior" of the Iraqi government, Tutwiler conceded that "no one can say at this point how rapidly these shortages will translate into meaningful decisions, particularly since Saddam Hussein has made clear that his army will be the last to be touched by shortages, and that he does not care how much the people of Iraq may suffer to protect that army." [40]

The views of the U.S. government on the Iraq sanctions were presented in an editorial of the Voice of America of 25 October 1990:

[...] With the exception of medical supplies or food in unauthorized humanitarian circumstances, no trade is allowed with Iraq. The message to Iraqi dictator Saddam Hussein is clear: withdraw from Kuwait peacefully and unconditionally -- or accept economic strangulation [...] In a message to the Iraqi people last month, President George Bush pointed out that "the occupation of Kuwait is helping no one and is now hurting you, the Iraqi people." The United Nations has put binding sanctions in place, not to punish the Iraqi people, but as a peaceful means of convincing the leadership of Iraq to withdraw from Kuwait. [41]

38 Rep. Coats, No. 8, 1991, at S364; see also Rep. Stump, 11 Jan. 1991, at H256; Rep. Hefley, 11 Jan. 1991, at H258; Sen. Rhodes, at H400

39 Edmund F. Scherr, US Sees Real Shortages Developing in Iraq, USIA, 31 October 1990, at <http://www.fas.org/news/iraq/1990/901031-160346.htm>

40 *Id.*

41 Editorial, broadcast by the Voice of America October 25, reflecting the views of the U.S. government. At <http://www.fas.org/news/iraq/1990/901024-159621.htm>

As with other obfuscation, U.S. President Bush admitted that the sanctions hurt the Iraqi people but at the same time claimed that they were not meant to “punish” them. The U.S. President glossed over the fact that civilian sufferings were the means he chose to use in “convincing the leadership of Iraq to withdraw from Kuwait.”

(c) The U.S. administration was informed on the consequences of the Iraq sanctions during the entire sanctions period

In the present section it will be shown that U.S. administration was informed during the entire sanctions period of the adverse consequences of the sanctions. The U.S. administration did not, in general, dispute such information, although it mostly ignored such information or attempted from time to time to attribute all such consequences to the person of Saddam Hussein, though with little apparent conviction.[42] Evidence about a health catastrophe in Iraq, including increased child morbidity rates and potential increases in child mortality rates, resulting from the compound effects of war and sanctions, began appearing as early as in 1991 in Western medical publications.[43] Even earlier, a detailed article published in the New York Times of 3 June 1991, quoted the Harvard University study team to the effect that "the collapse of electrical generating capacity [in Iraq] has been a crucial factor in this public health catastrophe." The team predicted tens of thousands of additional war-related deaths by the end of the year, a finding the Administration has not disputed. "Without electricity, hospitals cannot function, perishable medicines spoil, water cannot be purified and raw sewage cannot be processed," the study team's report said.[44]

In September 1992, the results of a study published in New England Journal of Medicine provided “strong evidence that the Gulf war and trade sanctions caused a threefold increase in mortality among Iraqi children under five years of age. We estimate that an excess of more than 46,900 children died between January and August 1991.”[45]

The U.S. administration and the Security Council received throughout the sanctions period reports from numerous quarters, including from the International Committee of the Red Cross, Amnesty International, journalists, academics, health professionals and human rights workers who visited Iraq, and other concerned individuals and organisations – including US legislators - regarding the grievous humanitarian consequences of the sanctions on Iraq.

42 Here one example. At a raucous town meeting at Ohio State University last month, Secretary of State Madeleine Albright laid the blame squarely on Iraq’s president: “I am willing to make a bet to anyone here that we care more about the Iraqi people than Saddam Hussein does. (Applause) For the last seven years, since the Gulf War, he has starved his people. We have provided food. There is no limit on the amount of humanitarian assistance that can go in. And I personally wrote the resolution that allows there to be oil sold for food.” ASSESSING THE COSTS, March 13, 1998, The NewsHour with Jim Lehrer, Transcript. At http://www.pbs.org/newshour/bb/middle_east/jan-june98/iraq_3-13a.html; Similar utterances were made by other U.S. leaders, disregarding the basic fact that it is not Saddam Hussein who maintains economic sanctions on Iraq.

43 One of the first reports on the humanitarian disaster in Iraq sent to President George Bush on 12 February 1991, was written by Ramsey Clark, former U.S. Attorney-General, after he returned from his trip to Iraq in the middle of the Gulf war (the letter is published in Clark’s book, *The Fire This Time*, pp. 253-261, see *supra* n. 9. Other major reports include: The Harvard Study Team: *The effect of the Gulf crisis on the children of Iraq*. The New England Journal of Medicine, Vol. 325 No. 13, (26 Sept. 1991), pp. 977-980; Editorial: *Starvation in Iraq*. The Lancet (9 Nov. 1991), pp. 1179-1180.

44 Patrick E. Tyler, *U.S. Officials Believe Iraq Will Take Years to Rebuild*, New York Times, 3 June 1991, mirrored at <http://www.casi.org.uk/discuss/2000/msg00552.html>

45 Alberto Ascherio, et al, *Effect of the Gulf War on Infant and Child Mortality in Iraq*, The New England Journal of Medicine 327(13), 1992, 931-936.

It is outside the capacity of the author to provide a comprehensive list of letters, reports and other communications sent to US leaders, legislators and representatives in the United Nations by individuals, non-governmental organisations and U.N. agencies highlighting the adverse consequences of the Iraq sanctions and pleading that measures adversely affecting the Iraqi civilian population be lifted. It is assumed here that the U.S. Ambassador to the U.N. duly informed his or her superiors at the State Department of reports received by the Security Council, including those dealing with the humanitarian situation in Iraq.

Selected reports by UN officials and agencies containing evidence on the humanitarian crisis in Iraq, the effects of the sanctions and recommendations

1. Report on humanitarian needs in Iraq in the immediate post-crisis environment by a mission to the area led by Martti Ahtisaari, the United Nations Under-Secretary-General for Administration and Management, 10-17 March 1991, S/22366, 20 March 1991

This report, based on a fact-finding mission to Iraq led by Martti Ahtisaari, highlighted the “near-apocalyptic” devastation that has befallen Iraq as a result of the compound effects of the Gulf war, the internal uprisings and the sanctions: “Now, most means of modern life support have been destroyed or rendered tenuous. Iraq has, for some time to come, been relegated to a pre-industrial age.” The report, forwarded to the Security Council, put the Council’s members on notice regarding the severity of the humanitarian situation in Iraq and the urgency of addressing this situation. The United States administration rejected most recommendations of the Ahtisaari mission.

2. Report of the Inter-Agency mission headed by the Executive Delegate for the United Nations Inter-Agency Humanitarian Programme for Iraq, Kuwait and the Iraq/Turkey and Iraq/Iran border areas, Sadruddin Aga Khan, 17 July 1991, UN Doc. S/22799

While the Ahtisaari report (*supra*) provided the first approximation of urgent humanitarian needs in Iraq, the report by the Aga Khan mission benefited from better pre-mission preparation, multi-disciplinary expertise and a longer observation and study period. The dramatic and deteriorating humanitarian situation in Iraq is conveyed at the very beginning of the report:

The aftermath of the Persian Gulf war of January and February 1991 presented a compelling spectacle of suffering and devastation to the international community...In Iraq itself, the upheaval’s insidious effects are leading to the gradual but inexorable collapse of essential services, leading to the risk of a humanitarian crisis whose eventual dimensions would dwarf today’s difficulties. [...] Our aim has been to be sober, measured and accurate. We are neither crying wolf nor playing politics. But it is evident that for large numbers of the people of Iraq, every passing month brings them closer to the brink of calamity. As usual, it is the poor, the children, the widowed and the elderly, the most vulnerable amongst the population, who are the first to suffer.

The Aga Khan report assesses the situation of four major sectors (a) water, sanitation and environmental health; (b) health; (c) food; and (d) energy. These sectors were identified by the mission as crucial for the immediate well-being of the population. The report was forwarded to the Security Council for action. The United States administration rejected most recommendations of the Aga Khan mission.

3. The Nutritional Status Assessment Mission to Iraq. FAO, Rome, November 1993. Doc. TCP/IRQ/2356e

In its report, the FAO mission noted

with deep concern the prevalence of the commonly recognized pre-famine indicators such as exorbitant prices, collapse of private incomes, soaring unemployment, drastically reduced food intakes, large scale depletion of personal assets, high morbidity levels, escalating crime rates and rapidly increasing numbers of destitute people...[L]arge numbers of Iraqis have now food intakes lower than those of the populations in the disaster stricken African countries.

The mission identified the UN sanctions as the main “cause” for the “persistent deprivation, severe hunger and malnutrition for a vast majority of the Iraqi population, particularly the vulnerable groups - children under five, expectant/nursing women, widows, orphans, the sick, the elderly and disabled.”

On the base of its findings, the mission concluded that

it would be impossible to continue the sanctions in their present form, without further aggravating the already grave food supply situation in Iraq. The lasting solution to the current food crisis would lie in the regeneration of the Iraqi economy which cannot be achieved without a resumption of international trade by the country.

No action was taken by the Security Council in response to the warnings and recommendations included in this report.

4. Impact of Reduction in Food Ration on the Most Vulnerable Children and Women, UNICEF, Baghdad, October 1994

In that report, UNICEF warned that the 2.5 million children, pregnant women and lactating mothers are likely to be at risk in Iraq. It noted that the

increase in the number of severe malnutrition cases, expected in the longer term, may lead to an increase in infant mortality. The expected increase in low-birth weight as a result of poor nutritional status among pregnant women together with an expected higher infection rate among under-nourished children will be contributing factors. Mild to moderate cases of malnutrition may enter the stage of chronicity where stunting would be noticeable. Nutritional deficiency may affect the growing brain of young children resulting in deterioration in the intelligence level of the growing population.

5. Evaluation of Food and Nutrition Situation in Iraq, Technical Cooperation Programme, FAO, Rome, 1995. Doc. No. TCP/IRQ/4552

An FAO Mission to Iraq investigated the nutritional status of the population and assessed the crop and food availability situation which prevails after the imposition of the an embargo in 1990. The findings of the FAO Mission were clear:

The shortages of basic foods are enormous....Prices of basic food stuffs have risen phenomenally. For example, the price of wheat flour in August 1995 is 11,667 times higher than in July 1990 and 33 times higher than in June 1993...Since 1993 the situation has become much worse for the majority of the population, with malnutrition, including under-nutrition and micro-nutrient deficiencies, commonly seen both in hospitals and in the general population. Both marasmus and kwashiorkor were widely observed in paediatric wards throughout the country and presented many of the classically recognized signs such as pedal oedema for kwashiorkor and severe wasting, especially visible in the ribs and limbs together with ‘old man faces’ for marasmus. The monthly average number of cases of kwashiorkor and marasmus has increased 50 fold since 1989 while the monthly average number of deaths

(denominators unspecified) for children under five years has increased nearly 8 fold...The [Iraqi] Ministry of Health estimates that 109,720 persons have died annually between August 1990 and March 1994 as a direct result of the sanctions. The Mission had no way of confirming this figure...The water and sanitation system remains critical throughout the country with the Basrah area being the most serious. The basic reason is the lack of spare parts for a variety of equipment throughout the system which cannot be purchased without foreign exchange. In addition, the Sanctions Committee approval is also required for most of the items.

6. Disastrous Situation of Children in Iraq, UNICEF report PR/GVA/96/035m, of 4 October 1996

In a press release Philippe Heffinck, UNICEF Representative for Iraq, is quoted to the effect that "[a]round 4,500 children under the age of five are dying here every month from hunger and disease"... The causes are extreme shortages of food and grossly depleted health services as well as a breakdown in the provision of clean drinking water and treatment/disposal of sewage.... In addition, UNICEF staff are reporting a rise in new hardships for children with sharp increases in the numbers of street children and child labourers.

7. The Health Conditions of the Population in Iraq, World Health Organisation, Geneva, 1996. Doc. WHO/EHA/96.1

The report by the WHO consultant was an attempt to collect health, morbidity and mortality data, focusing on the period from 1989 to 1994, to assess pre- and post-war [and sanctions] health status of the population. Among the conclusions of the report we read:

The sanctions imposed on Iraq and related circumstances have prevented the country from repairing all of its damaged or destroyed infrastructure, and whenever attempts have been made, these have been incomplete. This applies to electricity generating and water purification plants, sewage treatment facilities and communication and transportation networks. This has affected the quality of life of countless Iraqi citizens, especially those belonging to the mid and lower economic levels of the country's total population of 20 million, who do not have alternatives or options to overcome the effects of these ravages.

The vast majority of the country's population has been on a semi-starvation diet for years. This tragic situation has tremendous implications on the health status of the population and on their quality of life, not only for the present generation, but for the future generation as well.

The reduction in the import of medicines, owing to a lack of financial resources, as well as a lack of minimum health care facilities, insecticides, pharmaceutical and other related equipment and appliances, have crippled the health care services which in pre-war year were of a high quality. Assessment reports rightly remarked that the quality of health care in Iraq, due to the six-week 1991 war and the subsequent sanctions imposed on the country, has been literally put back by at least 50 years. Disease such as malaria, typhoid and cholera, where were once almost under control, have rebounded since 1991 at epidemic levels, with the health sector as a helpless witness.

Very rarely has the impact of sanctions on millions of people been documented. Severe economic hardship, a semi-starvation diet, high levels of disease, scarcity of essential drugs and, above all, the psycho-social trauma and anguish of a bleak future, have let to numerous families being broken up leading to distortions in social norms.

The impact of this unfortunate situation on the infant and child population in particular in Iraq needs special attention. It is not only the data on morbidity and mortality that tell the story, but equally important are the crippling effects of many of these morbidities which are often forgotten. The psychological trauma of the six-week 1991 war and the terrible hardships enduring with the sanctions since then, can be expected to leave indelible marks on the mental health and behavioural patterns of these children when they grow to adulthood. This tragic aspect of the impact of the war and conditions surrounding the sanctions is rarely articulated, but the world community should seriously consider the implications of an entire generation of children growing up with such traumatized mental handicaps, if of course, they survive at all.

There was no adequate response by the Security Council in response to the warnings and recommendations included in this report.

8. World Food Programme: Food Supply And Nutrition Assessment Mission to Iraq, FAO, Rome, 3 October 1997

Acknowledging that “there has been some improvement in the overall food supply situation following the implementation of Security Council Resolution 986 (1995) [the “oil-for-food programme”], malnutrition still remains a serious problem throughout the country and the Mission widely observed cases of marasmus and kwashiorkor.”

Regarding food security in Iraq, the Mission observed:

The agriculture sector has deteriorated significantly in the 1990s, due to a lack of investment and shortage of essential inputs...Perhaps the most far-reaching recommendation for both agriculture and nutrition concerns the need for economic rehabilitation and development throughout the country. Unless purchasing power is generated and greater investment is made in agriculture, additional and necessary high-quality proteins and bio-available micro-nutrients will be beyond the means of many, and nutritional problems will persist, despite the improved ration under SCR 986.

9. Cover letter dated 20 February 1998 from the Secretary-General Addressed to the President of the Security Council, to the Statement of the Inter-Agency Standing Committee on the humanitarian impact of sanctions[46].

In the letter the Secretary-General drew the attention of the members of the Security Council to the Statement of the Inter-Agency Standing Committee on the humanitarian impact of sanctions. This Committee, established pursuant to General Assembly resolution 46/182 of 19 December 1991, included representatives from UNDP, the UN High Commissioner for Refugees, WFP, FAO, UNICEF, WHO, the International Federation of the Red Cross and Red Crescent Societies, ICRC, InterAction, UNHCHR and the World Bank. In the Statement, dated 29 December 1997 the Committee

expresses its concern with respect to the humanitarian impact of [UN imposed sanctions] and strongly believes that adverse humanitarian consequences on civilian populations should be avoided. The design of a sanctions regime should therefore take

46 Letter dated 20 February 1998 from the Secretary-General Addressed to the President of the Security Council, UN Doc. S/1998/147, 23 February 1998. at <http://www.un.org/Docs/sc/letters/1998/s1998147.htm> Note that the statement by the Inter-Agency Standing Committee, dated 29 December 1997, which was specifically addressed to the Security Council, was delayed by S.G. Kofi Annan for almost two months.

fully into account international human rights instruments and humanitarian standards established by the Geneva Conventions.

10. Assessment of the Food and Nutrition, Iraq, FAO, Rome, 2000, Doc. TCP/IRQ/8924

The high levels of malnutrition documented by the 1995 mission were an important catalyst for the reaching of an agreement on the implementation of the Oil-for-Food Programme established through Security Council Resolution - SCR 986 in April 1995.

The mission recognises that malnutrition is often caused by factors other than those related to food. Poor water supply both in quality and quantity as well as inadequate sanitation are key causative factors of frequent and repeated infection resulting in infant and child malnutrition throughout the country. Infections in infants are often associated with the decline in breast-feeding, the too-early introduction of infant formula and an increase in bottle-feeding. Other important factors include the lack of general nutrition and health education, overcrowding and poverty. These factors have had more of a negative impact in the centre/south than in the north with the beneficial effects of increased family rations being offset by the combination of these adverse conditions.

With poor water and sanitation a major cause of malnutrition and excessive morbidity and mortality, the mission considers the maintenance and rehabilitation of the water and sanitation system a priority for meeting basic needs.

The food industry has been in decline since 1991 when most of the factories were closed due to lack of hard currency for importing new machinery, spare parts, raw materials and other supplies... Lack of power supply, water availability and sewerage disposal has further limited the development of a safe food industry.

11. Iraq Child and Maternal Mortality Surveys, UNICEF report 1999[47]

A Reuters news dispatch of 22 August 1999 entitled "UNICEF Says Much More Needs To Be Done In Iraq" by Nadim Ladki, reports on the most extensive surveys on child and maternal mortality undertaken in Iraq since the onset of the sanctions.

Iraq said UNICEF survey proved that the sanctions, in place since the invasion of Kuwait, were killing thousands of children every month and called for an immediate end to the embargo.

The United States blamed Iraqi President Saddam Hussein for the high child mortality rates, saying the Iraqi authorities were withholding medicine supplies from its own people.

U.N. Children's Fund (UNICEF) representative in Baghdad, Anupama Rao Singh, said the high mortality rates were not only the result of malnutrition and lack of medicine but also lack of funds to maintain Iraq's infrastructure, especially in the sectors of drinking water, sewage and electricity.

The UNICEF survey found that in the south and center of Iraq, under-five mortality more than doubled from 56 deaths per 1,000 live births in the period 1984-1989 to 131 per 1,000 in the period 1994-1999.

12. Iraq Surveys Show 'Humanitarian Emergency', UNICEF Press Release, 12 August 1999.[48]

47 <http://www.unicef.org/reseval/iraqr.html>

48 <http://www.unicef.org/newsline/99pr29.htm>

In a press release of 12 August 1999, UNICEF Executive Director Carol Bellamy commented on the first surveys since 1991 of child and maternal mortality in Iraq conducted by UNICEF. These surveys reveal that in the heavily-populated southern and central parts of the country, children under five are dying at more than twice the rate they were ten years ago. Ms. Bellamy noted that *if the substantial reduction in child mortality throughout Iraq during the 1980s had continued through the 1990s, there would have been half a million fewer deaths of children under-five in the country as a whole during the eight year period 1991 to 1998.*(emphasis added)

Periodic assessments by the UN Secretary-General of the performance of the Oil-For-Food Programme containing his assessment of the humanitarian situation in Iraq and the effectiveness and adequacy of the programme: UN Doc. S/1997/206 of 10 March 1997; S/1997/419 of 2 June 1997; S/1997/685 of 4 September 1997; S/1997/935 of 28 November 1997; S/1998/90 of 1 February 1998; S/1998/194 of 4 March 1998; S/1998/477 of 5 June 1998; S/1998/1100 of 19 November 1998; S/1998/843 of 20 November 1998; S/1999/187 of 25 February 1999; S/1999/573 of 18 May 1999; S/1999/896 of 22 August 1999; S/1999/1162 of 17 November 1999; S/2000/22 of 14 January 2000; S/2000/208 of 10 March 2000; S/2000/520 of 1 June 2000; S/2000/857 of 8 September 2000; S/2000/1132 of 29 November 2000; S/2001/186 & S/2001/186/Corr.1 of 2 March 2001; S/2001/505 of 18 May 2001.

(d) U.S. leaders acknowledged the causality between the sanctions and the humanitarian situation in Iraq

Until the end of 1998, the U.S. opposed any relaxation of the sanctions that would *improve* the humanitarian situation in Iraq; it only approved Security Council resolutions aimed at preventing “any further deterioration” of the humanitarian situation in Iraq.[49] Senior UN officials admitted that the “oil-for-food” programme “was never meant to...meet all the humanitarian needs of the Iraqi people, nor can it restore Iraq’s economic and social infrastructure to pre-1990 levels”.[50]

While U.S. leaders periodically blamed Iraq’s President Saddam Hussein for all ills that had befallen the Iraqi population, including increased child mortality, the U.S. administration nevertheless recognized, in oblique ways, the causality between the sanctions it had imposed (alone and through the Security Council) and the humanitarian situation in Iraq.

- In 1992, the U.S. proposed to have some frozen Iraqi funds in various countries released in order to allow Iraq to import humanitarian goods.[51] Although totally inadequate, this proposition was premised on the awareness of the U.S. of the link between the lack of foreign exchange by Iraq and the humanitarian situation in that country.

49 The formal change from status-quo to improvement was reflected in Security Council resolution 1210 of 24 November 1998 (for comparison, see prior resolutions under the “oil-for-food” programme).

50 See UN Doc. No. S/1999/481, 28 April 1999, p. 25-6

51 See Security Council resolution 778 (1992), permitting each member state, subject to various qualifications, to “unfreeze” a maximum of \$200 million from proceeds of sales of Iraqi oil and transfer such funds to the UN escrow account from which humanitarian goods could be purchased for Iraq. The net effect of this Resolution was meagre: As of 28 May 1993, only \$24 million was received by the escrow account subsequent to this resolution. See, Hazel Fox and C. Wickremasinghe, *UK Implementation of Economic Sanctions*, 42 *International and Comparative Law Quarterly* (1993), pp. 950-1.

- In 1995 the U.S. and the other four permanent members of the Security Council sent a non-paper to the Council's President entitled "Humanitarian impact of sanctions". In that non-paper the five permanent Council members suggested that

future sanctions regime (sic) should be directed to minimize unintended adverse side-effects of sanctions on the most vulnerable segments of targeted countries.[52]

Apart from the sloppy and contrived formulation,[53] this non-paper resulted, obviously, from the awareness of the Permanent Council members, including the United States, that the adverse effects of the economic sanctions on Iraq had become increasingly embarrassing for them and for the Council. The letter acknowledges causality between economic sanctions and their adverse humanitarian effects as well as the need to minimize such effects. The authors stopped short of admitting to have themselves caused adverse effects on the civilian population of Iraq, including substantial increase of child mortality, through the imposition of sanctions. This non-paper does not mention any specific sanctions regimes or any specific humanitarian adverse consequences.

- In the same year (1995) the U.S. and other Council members pressed for the establishment of the oil-for-food programme that had the purpose to prevent "the risk of a further deterioration" of the "serious nutritional and health situation of the Iraqi population".[54] By proposing and establishing this programme that would allow Iraq to sell oil and obtain humanitarian goods, the Council implicitly acknowledged its responsibility in contributing to the humanitarian crisis in Iraq.

- On 12 May 1996, Madeleine Albright, at that time U.S. Ambassador to the United Nations, was asked on a U.S. national TV programme (CBS, 60 Minutes), whether the sanctions against Iraq were justified, bearing in mind that half a million children had apparently died there as a result of the sanctions. Far from rejecting the allegation, she answered: "I think this is a very hard choice, but the price – we think the price is worth it".[55] For the present purpose it is not important whether the allegation made at that time was true, partly true or false[56]. The fact remains that the U.S. Ambassador to the U.N. accepted the allegation as true. She thereby acknowledged her awareness that extensive deaths had already resulted from the sanctions. In addition, she justified the measures that led to these deaths.

- In 1998, observing no improvement in the humanitarian situation in Iraq, the Security Council, supported by the United States, accepted to increase substantially the amount of oil that Iraq was allowed to export in order to purchase humanitarian goods and at the same time endeavour to "improve" the humanitarian situation in Iraq.[57] The concession made by the United States within the Council was then partly nullified in the Sanctions Committee, in the form of increased "holds" on goods. While the new Security Council resolution allowed Iraq to export more oil, Iraq was prevented from utilizing the full proceeds of such oil exports

52 Letter and Annex dated 13 April 1995 from the Permanent Representatives of China, France, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America, to the President of the Security Council, UN Doc. S/1995/300 www.un.org/sc/committees/sanctions/s95300.pdf

53 What are "segments of targeted countries" ? What are "unintended adverse side-effects of sanctions", if the aim of economic sanctions is to cripple an economy ?

54 Security Council Resolution 986 (1995), Preamble

55 Transcript of the Programme "60 Minutes", CBS, 12 May 1996, obtained by the author from CBS.

56 It appeared later that the figure might have been excessive at the time. According to a detailed study made later by UNICEF (in 1999), about half a million children had died in Iraq between August 1990 and 1999 in excess of expected rates of child mortality. See notes on UNICEF Press Release of 12 August 1999 *supra*.

57 Security Council Resolutions 1120 (1998) and SCR 1153 (1998)

because orders for humanitarian goods were increasingly put on hold by the Sanctions Committee, mostly at the behest of the United States and the United Kingdom.[58]

3. Concluding observations

It should not surprise anyone that the United States administration recognized the causality between the sanctions and the humanitarian crisis in Iraq. The proximate purpose of economic sanctions was, after all, to cripple the Iraqi national economy and cause hardships to the population. This purpose was clearly expressed by several US legislators in the first months of the sanctions and implicitly by the Director of the CIA. While contriving concern for the Iraqi population and supporting a so-called “humanitarian” programme,[59] United States leaders did not waver during the entire sanctions period in their determination to prevent the normalization of economic life in Iraq. They only permitted, grudgingly and belatedly, some rehabilitation of destroyed or dilapidated facilities, such as water treatment plants and electric power stations when it could be shown that this was warranted by strict humanitarian considerations.

It appears that there is no need to ascertain whether those who impose economic sanctions are aware that such measures will have adverse consequences on the civilian population. Such awareness must be presumed, because economic sanctions are meant to cause hardships to the civilian population. What needs to be ascertained, however, is to which extent specific consequences can be foreseen by sanctioning parties, whether the sanctioning parties attempt in good faith to predict and monitor these consequences, and what notice they are been served with regarding such consequences. These questions cannot be answered in the abstract. They must be dealt on a case-by-case basis.

In the case of the United States, which is the subject of the present study, it has been demonstrated that members of the US intelligence community could foresee in general the emergence of dire hardships in Iraq and actually foresaw the adverse public health effects of economic sanctions, including the consequences ensuing from the denial of items necessary to operate and rehabilitate water treatment facilities and electrical power production. Such denial compounded, knowingly, the consequences of the deliberate destruction by U.S. bombing (in the Gulf war of 1991) of most electric power plants in Iraq. As the U.S. administration, through its representatives in the Sanctions Committee, wilfully prevented Iraq from importing spare parts and equipment necessary to repair the electric power system and necessary supplies and spare parts for water treatment facilities; and as the U.S. administration can be presumed to have been informed by its U.N. representatives of the humanitarian consequences resulting from the above measures, including increased child mortality; it is likely that such consequences had been intended. The conjunction of foreseeability, general intent to cause hardships, detailed and compelling notice served on a regular basis, and a protracted neglect to monitor the consequences, strongly suggests a specific criminal intent to cause the observed harm in Iraq.

58 According to an Associate Press release of 27 January 2000 “the United States leads all 15 nations on the Security Council in placing contracts for supplies on hold, currently blocking \$1.3 billion worth of contracts.” The workings of the Sanctions Committee, including the system of “holds”, is described in a detailed study by Paul Conlon, former deputy-secretary of the Sanctions Committee: Paul Conlon, *United Nations Sanctions Management: A Case Study of the Iraq Sanctions Committee, 1990-1994*, Transnational Publishers, Inc., Ardsley, New York, (2000)

59 The programme used the proceeds of Iraqi oil exports to feed the Iraqi people, the owners of that oil. The term “humanitarian” is thus misleading as it implies that the international community financed the programme.