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End Game? Removing Sanctions in Iraq

by
**David Cortright, Linda Gerber,
Alistair Millar, and
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Policy Brief F11

A Project of the
Fourth Freedom Forum
and the Joan B. Kroc Institute
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The Anglo-American proposal now before the Security Council calls for an immediate end to UN sanctions. The lifting of sanctions is necessary to clarify procedures for the resumption of Iraqi oil exports and to remove trade and investment barriers that impede Iraq's economic recovery. The stakes in this debate go far beyond the question of freeing trade, however. Fundamental issues of international law also hang in the balance. The verification of Iraq's disarmament, the UN role in Iraq's reconstruction and political transition, the prospects for restraining weapons proliferation in the region, and the fate of hundreds of billions of dollars of debt and compensation claims—all hinge on how sanctions are lifted.

This paper provides a brief overview of some of the issues associated with the lifting of UN sanctions in Iraq.

Control of Oil

The draft resolution ends UN management of Iraqi oil sales. It replaces the current UN oil for food escrow account with a new “Development Fund for Iraq.” All remaining funds in the escrow account are to be transferred to the new Fund, which will be controlled by U.S. and British occupation forces. The resolution directs that “all export sales of petroleum, petroleum products, and natural gas . . . shall be deposited” in the Fund. Revenues in the account “shall be dispersed at the direction of the Authority,” which is defined as the unified command of the U.S. and British occupation force.

The Development Fund is to be located at the Central Bank of Iraq, whose current director, Peter McPherson, is a former deputy Secretary of the U.S. Treasury and executive of the Bank of America. Disbursements from the Fund will be made in “consultation with the Iraqi interim leadership,” but actual control of the Fund will rest solely with the U.S.-led “Authority.”

The draft resolution states that the Development Fund “shall be used to meet the humanitarian needs of the Iraqi people, for the economic reconstruction and repair of Iraq's infrastructure, for the continued disarmament of Iraq . . . and for other purposes benefiting the Iraqi people.”

The Development Fund will have an international advisory board, whose members will include a UN Special Coordinator for Iraq and representatives of the International

Monetary Fund, the World Bank, and the Arab Fund for Social and Economic Development.

- The advisory board will select accountants to audit the Development Fund but will have no power over financial disbursement decisions.
- The resolution provides no mechanism for representatives of the Iraqi people to participate in the disbursement decisions of the Development Fund.
- The U.S.-led command will have exclusive control over these matters. This arrangement will continue until an “internationally recognized representative government of Iraq is properly constituted.” The determination of when such a government is constituted is not addressed in the resolution.
- The draft resolution extends the legal protections and immunities normally afforded the United Nations to the new Development Fund.
- It grants immunity from judicial, administrative, or other legal proceedings to all oil-related revenues. This immunity is to remain in place until a new government is properly constituted and a debt restructuring process is completed. UN member states are instructed to amend their domestic laws to guarantee this immunity. This grant of legal immunity would protect the U.S.-led occupation authority against all legal claims arising from the disbursement of Iraqi oil revenues.
- Although the Development Fund is controlled by the U.S.-led occupation authority rather than the Security Council, the Fund will enjoy the legal privileges normally reserved for UN agencies.

The provisions of the resolution are to remain in place for an initial twelve months but will “continue thereafter as necessary unless the Security Council decides otherwise.” This means that a vote of the Council will be required to make a change, and that the United States and Britain could veto any challenges to their financial control. Under these terms U.S. and British officials will gain exclusive rights to manage and direct Iraq’s oil revenues.

The UN Disarmament Mandate

The draft resolution ignores the provisions of previous Security Council resolutions relating to the disarmament of Iraq and makes no provision for completing the disarmament process. The draft resolution “reaffirms the importance of the disarmament of Iraqi weapons of mass destruction” but contains no actual disarmament provisions. In the original draft of the resolution this passage included the phrase “in accordance with . . . previous resolutions,” but that reference was deleted in the current draft.

- According to all previous Security Council resolutions, which are legally binding, the lifting of sanctions requires a UN certification that Iraq is fully disarmed. The draft resolution ignores these requirements.
- The resolution makes no mention of the role of the International Atomic Energy Agency (IAEA) and the UN Monitoring, Verification and Inspection Commission (UNMOVIC), which are legally responsible for verifying Iraq's disarmament and making a recommendation for the Security Council to lift sanctions. UNMOVIC remains a subsidiary body of the Security Council, but the draft resolution leaves its status undetermined.

Some Security Council member states have suggested maintaining a linkage to previous disarmament resolutions by establishing a procedure for UNMOVIC and IAEA to certify Iraq's disarmament. The return of UN inspectors would provide international confidence and validation for any discovery of remaining weapons of mass destruction in Iraq. It would also maintain the continuity of UN disarmament efforts in Iraq, and preserve the precedent of intrusive weapons monitoring in future cases.

Arms Embargo

The draft resolution provides for the continuation of the current arms embargo against Iraq. The resolution ends all prohibitions on trade with Iraq, with the exception of the sale or supply of arms and military-related goods. The resolution makes no provision for monitoring or enforcing the continuing arms embargo. Nor does it specify any time limit or conditions for the lifting of the embargo.

- The continuation of an arms embargo could have the effect of preventing a new Iraqi regime from following the path of its predecessor in diverting resources to unnecessary weapons purchases.
- Without a regional arms limitation plan, however, an arms embargo against Iraq alone would be discriminatory. A future government in Iraq, even if fully democratic, might be motivated by balance of power considerations to rebuild its armed forces and perhaps even acquire weapons of mass destruction to match the capabilities of its neighbors.
- The continuation of disarmament and arms restraint obligations in Iraq would require a regional framework. Under the original Gulf War cease-fire agreement, Resolution 687 (1991), the disarmament of Iraq was to be a "step toward establishing in the Middle East a zone free of weapons of mass destruction." The Security Council thereby recognized the connection between the security of Iraq and that of other states in the region. The draft resolution makes no mention of a weapons-free zone in the region or of any other regional security arrangements.

UN Role

Although the draft resolution invokes Chapter VII of the UN Charter, it excludes the Security Council from any significant role in shaping Iraq's economic and political future. It calls for the appointment of a UN Special Coordinator for Iraq but gives the position no real authority. The Special Coordinator will report regularly to the Security Council and work "intensely with the Authority" and Iraqi representatives to establish representative government, but decision-making authority will rest entirely with the occupying powers.

The UN envoy will coordinate humanitarian assistance and reconstruction activities by "UN agencies and between UN agencies and nongovernmental groups." The responsibilities of the Coordinator also include "promoting" economic reconstruction and human rights and "encouraging" efforts to rebuild administrative and police capacity.

- While excluding the United Nations from decision-making roles related to Iraq's reconstruction and political transition, the draft resolution places the Security Council in the position of conferring legitimacy on the U.S.-led occupation. By adopting the resolution and "noting" the role of the Authority as defined in the text, the Security Council would be "recognizing the specific authorities, responsibilities, and obligations" of the U.S.-led occupation command and of whatever government it creates.
- By transferring Iraqi oil revenues to U.S.-led control, the Council would be turning over legal responsibility for the sale of Iraq's natural resources to the Authority. These acts would amount to de facto legal recognition.

Debt and Compensation

The draft resolution makes only brief reference to the problems associated with resolving debt and compensation claims. Iraq's potential obligations from foreign debt and war-related compensation claims exceed \$325 billion, according to an analysis by the Center for Strategic and International Studies.¹ This amounts to more than \$13,000 for every man, woman, and child in Iraq.

- Estimates of Iraq's foreign debt are uncertain, ranging from \$62 billion to some \$130 billion. The wide disparity results from the secrecy of the previous regime and disagreements over whether payments from Gulf States during the Iran-Iraq war were grants or loans and whether accrued interest should be included.²
- Estimates of pending compensation claims are also uncertain. The UN Compensation Commission created after the 1991 Gulf War has received claims of more than three hundred billion dollars in war-related damages. Through previous charges on Iraqi oil revenues, the UN Compensation Fund has paid \$16 billion in claims so far, mostly for individual and family claims. Still unresolved are \$172 billion in government and corporate claims, 40 percent of which comes from Kuwait.³

- The draft resolution refers to “multilateral consideration of issues relating to Iraq’s sovereign debt through appropriate international mechanisms such as the Paris Club” but otherwise offers no guidance for untangling these obligations.
- The draft resolution does not offer a solution to the problem of compensation claims. The resolution directs that 5 percent of all Iraqi oil revenues be deposited in the UN Compensation Fund. The resolution further specifies that “this requirement shall be binding on a properly constituted . . . Iraqi government and any successor.” Future Iraqi governments thus will be burdened with paying for the war damages incurred by Saddam Hussein. Unless some provision is made for the government of Kuwait and other parties to waive some or all of their claims, the people of Iraq will be making war reparations payments for many decades to come.
- U.S. officials and some European governments have discussed the possibility of canceling a portion of Iraq’s debt, much of which was incurred for the purchase of weapons. These discussions will take place within the framework of the Paris Club. A write-off of some or all of the financial obligations incurred by Saddam Hussein might set a precedent for the cancellation of so-called “odious” debts. These are defined as debt obligations incurred by dictators to finance war and repression. Canceling odious debts in Iraq might set a precedent that would make creditors wary of financing future arms purchases by dictatorial regimes.⁴

Conclusion

As this paper notes, the lifting of sanctions in Iraq raises many complex legal and political issues that are not adequately addressed in the current draft resolution:

- Additional mechanisms are needed to give the international advisory board and interim Iraqi representatives a greater role in establishing expenditure guidelines and overseeing allocation decisions by the Development Fund.
- The provisions of the resolution should be renewable every twelve months through an affirmative Security Council vote rather than continuing automatically after the first year.
- UNMOVIC and the IAEA should be directed to return to Iraq at the earliest practical date to certify the disarmament of Iraq.
- The UN should convene a conference of states in the region to develop mechanisms for creating a zone free from weapons of mass destruction, and to consider measures for limiting the sale or supply of weapons to Iraq and neighboring states.
- The UN Special Coordinator for Iraq should be given greater decision-making authority in matters related to Iraq’s economic reconstruction and political transition.

- The Paris Club and the UN Compensation Commission should convene an international conference to address procedures for writing off portions of Iraq's foreign debt and canceling war damage claims.

The lifting of sanctions will provide a legal basis for the renewal of Iraqi oil sales and will generate urgently needed revenue to finance the country's economic recovery. If this process is to unfold with the full confidence of the international community, and with participation by representatives of the Iraqi people, additional efforts will be needed to address unresolved issues.

Notes

¹ Information about Iraq's debt can be found in Frederick D. Barton and Bathsheba N. Crocker, "A Wiser Peace: An Action Strategy for a Post-Conflict Iraq, Supplement I: Background Information on Iraq's Financial Obligations," 23 January 2003. Available online at the *Center for Strategic & International Studies* <http://www.csis.org/isp/wiserpeace_I.pdf> (19 May 2003).

² Barton and Crocker, "A Wiser Peace."

³ Barton and Crocker, "A Wiser Peace."

⁴ Michael Kremer and Seema Jayachandran, "Odious Debt," Brookings Institution Policy Brief #103, July 2002. Available online at *The Brookings Institution* <<http://www.brookings.edu>> (9 May 2003).

The Fourth Freedom Forum is a not-for-profit, nonpartisan, nonsectarian, private operating foundation. Founded in 1982, the Forum stimulates informed public discussion of international security issues, emphasizing the use of economic power instead of military force. Its goal is to achieve "freedom from fear" through the large-scale reduction of armaments and the establishment of enforceable international law.

The Fourth Freedom Forum has offices in Goshen, Indiana and Washington, D.C.



The Joan B. Kroc Institute for International Peace Studies was established at the University of Notre Dame in 1986. The Institute conducts educational, research, and outreach programs on international peace. The Institute's programs emphasize international norms and institutions; religious, philosophical, and cultural dimensions of peace; conflict transformation; and social, economic, and environmental justice.

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