

Illegality of Imposing Comprehensive Sanction on Iraq: Contradiction Policy of Security Council

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Abstract

During the history of the United Nations, Security Council have imposed partial and comprehensive sanctions on some countries. In all these resolutions, humanitarian commodities including foodstuff and medicine were exempted except in Iraq where foodstuff and medicine were included in the sanction regime. This has resulted to large scale of humanitarian crises during the thirteen years of sanction. The aim of this paper is to examine whether or not the Security Council has authority to adopt such complete siege in preventing Iraq from importing humanitarian commodities. It also aims to ascertain whether or not the Security Council exceeded its authority illegally and punished the whole Iraqi people for political reasons.

Keywords: Partial sanction, comprehensive sanction, foodstuff, medicine, Geneva Convention, Large scale crises

Introduction

Historical Review of Security Council Sanctions

In the historical review of Security Council sanction, Article 41 of chapter VII of United Nation charter was used by Security Council to enforce sanction on some countries. This sanction is according to the objective stated in each resolution.

Article 41 states:

"The Security Council may decide what measures, not involving the use of armed forces, are to be employed to give effect to its decisions, and it may call upon the Member of the United Nation to apply such measures. They may include complete or partial interruption of: economic relations and of rail, sea, postal, telegraphs, radio, and other means of communication and the severance of diplomatic relations."^[2]

Security Council Report about U.N. Sanction stated: "While Article 41 does not specifically mention the word sanction, it lists specific sanction

measures to be taken; while at the same time, making the list is not exhaustive."^[2]

Accordingly, neither basic humanitarian requirements (food, medicine and medical equipments, purification of water materials, education, civilian commodities) nor comprehensive sanction were covered in this article.

Since the establishment of the United Nation Organization, Security Council has adopted several resolutions of sanctions. However, these resolutions vary in terms of the objective and scale of coverage from targeting individuals, companies, organizations, and countries. Also, resolutions adopted include partial and comprehensive sanctions.

Partial Sanction

All partial Security Council resolutions at countries level targeted certain objectives. These include military and military equipments, non-proliferations, assets, products, and terrorist activities. Therefore, this is without reference to civil and humanitarian commodities. These resolutions was adopted by Zambia 326 (1973), Libya 748 (1973), Somalia 751 (1992), Liberia 778 (1992), Angola 864 (1993), Rwanda 918 (1994), Sierra Leone 1132 (1996), Kosovo 1160 (1998), Afghanistan 1267 (1999), Democratic Republic of Congo 1533 (2004), Cote d'ivoire 1572 (2004), Sudan 1591 (2005), Democratic People's Republic of Korea 1718 (2006), and Iran 1737 (2006).

Comprehensive Sanctions

Security Council adopted comprehensive sanction in three countries (Southern Rhodesia, Yugoslavia, and Haiti). This was with the exemption of some basic commodities such as food, medicine, and other humanitarian requirements. In the case of Iraq, Security Council took severe measures which cover all commodities. Subsequently, these commodities include food and other humanitarian needs in sanction regime as will be mentioned later.

Southern Rhodesia

The first comprehensive sanction imposed by the Security Council was on South Rhodesia as referred to in paragraphs 3, 4, and 5 of 253 (1968) resolution:

“All States Members of the United Nations shall prevent:

- (a) The import into their territories of all commodities and products originating in Southern Rhodesia and exported them from ...;
- (b) Any activities by their nationals or in their territories which would promote the export of any commodities or products from Southern Rhodesia...;

(c) The shipment in vessels or aircraft of their registration or under charter to their nationals, or the carriage (whether or not in bond) by land transport facilities across their territories of any commodities or products originating in R products... to any person or body;

(d) The sale or supply by their nationals from their territories and of any commodities or products (whether or not originating in their territories, but not including supplies intended strictly for medical purposes, educational equipments, and materials for use in schools and other educational institutions, publications, news materials, in special humanitarian circumstances, food-stuff) to any person or body in Southern Rhodesia or to any other person or body for the purpose of any business carried out or operated from Southern Rhodesia..."^[1]

Paragraph 4: "All States Members of the United Nations shall not make available to the illegal regime in Southern Rhodesia or to any commercial , industrial or public utility undertaken, including tourist enterprises in Southern Rhodesia and any funds or investment or any other financial or economic recourses; and shall prevent their nationals and any person within their territories from making available to the regime or to any such undertaking any of such funds or recourses and from remitting any other funds to persons or bodies within Sothern Rhodesia, except payments exclusively for pensions or for strictly medical, humanitarian or educational purposes, or for the provision of new material and in special circumstances, foodstuff."^[1]

Despite the comprehensive nature of sanction regime imposed on Southern Rhodesia, exemption of some basic commodities and their financing were clearly indicated in the resolution. However, this was done so that the continuation of imports of these basic commodities can be maintained for the requirements of the population.

Former Yugoslavia

Security Council adopted resolution 757 in May 30, 1992, under chapter VII of the Charter of United Nations. Consequently, this sanction imposes sanction on former Yugoslavia as stated in paragraphs 4, 5, 6, and 7.

Paragraph 4 prevented import and export to and from Yugoslavia for all commodities except "supplies intended for medical purposes and foodstuff notified to the committee established pursuant to resolution 724 (991)";

Paragraph 5 prevented the making of available fund or any other financial or economic resources to any person or body in Yugoslavia except "payments exclusively for strictly medical or humanitarian purposes and foodstuff";

Paragraph 6 denied permission to any aircraft to takeoff, land or fly over their territory if it is destined to land, or except it is arriving for humanitarian purposes. Also, it prohibit the engineering and maintenance or servicing of Yugoslavian aircrafts; and

Paragraph 7 reduced the level of diplomatic mission and consular staff in Yugoslavia. This prevents the participation of Yugoslavian sport groups abroad. Also, it results in the suspension of scientific, technical, and cultural cooperation with Yugoslavia.

Haiti

Under chapter VII, the Security Council adopted 841 Resolution on the 16th of June 1993. However, this resolution enforces sanction for the purpose of restoring elected government after being removed by military coup in paragraphs 5, 6, 7, and 8.

Paragraph 5 prevented all countries to export petroleum or petroleum products or arms. This includes all arm materials and equipments including weapons and ammunition to Haiti except limited quantities of petroleum products under the approval of the Committee established according paragraph 7;

Paragraph 6 prohibited all traffic entering Haiti territories carrying commodities referred to in paragraph 5;

Paragraph 8 froze all funds related to Haiti government.

Iraq

Acting under chapter VII, the Security Council adopted sanction on Iraq on the 6th of August 1990. Therefore, resolution 661 aims to force Iraq to withdraw from Kuwait and to restore the Legitimate Government of Kuwait.

Paragraph 3 of this resolution outlined sanction regime as a total blockade.

"Decides that all States shall prevent:

(a) The import into their territories of all products origination in Iraq ...;

Any activities by their nationals or their territories which would promote or are calculated to promote the export or trans-shipment of any commodities or products from Iraq...; and any dealings by their nationals or their flag vessels or in their territories in any commodities or products operating in Iraq and exporting them from after the date of the present resolution, including, in particular, any transfer of funds to Iraq of such activities or dealings;

(b)-The sale or supply by their nationals or from their territories or using their flag vessels of any commodities or products, including weapons

or any other military equipment, whether or not originating in their territories; but not including supplies intended strictly for medical purposes and, in humanitarian circumstances, foodstuff, to any person or body in Iraq or Kuwait or to any person or body for the purposes of any business carried in or operated from Iraq or Kuwait , and any activities by their nationals or in their territories which promote or are calculated to promote such sale or supply of such commodities or products;

(c)-Decides that all States shall not make available to the government of Iraq or to any commercial, industrial or public utility undertaking in Iraq or Kuwait, any funds or any other financial or economic resources and shall prevent their nationals and any person within their territories from removing from their territories or otherwise making available to that Government or to any such undertakings any such funds or resources and from remitting any other funds to persons or bodies within Iraq or Kuwait, except payments exclusively for strictly medical or humanitarian purposes and , in humanitarian circumstances, foodstuffs.”^[1]

Paragraph 6 stated: "Decides to establish, in accordance with rule 28 of provisional rules of procedures of the Security Council, a Committee of the Security Council consisting of all the members of the Council, to undertake the following tasks and to report on its work to the Council with its observations and recommendations:

(a) To examine the reports on the progress of the implementation of the present resolution which will be submitted by the Secretary-General;

(b) To seek from all States further information regarding the action taken by them concerning the effective implementation of the provisions laid down in the present resolution." ^[1]

Resolution 661 enforced total blockade on Iraq. Despite there is reference to the exemption for medical purposes and foodstuff in humanitarian circumstances (but not in normal daily requirement), security council did not give to the mentioned above committee any authority to permit the export of food and medicine for Iraq as it did for Yugoslavia. Also, they restricted the authority of the Committee to follow the implementation of the resolution.

After the second gulf war in 1991 and the withdrawal of Iraq from Kuwait, Security Council should have lifted sanction in accordance with resolution 661 and international law. In contrary, Security Council kept sanction in force and linked lifting sanction with new objective. Thus, this objective entails destroying chemical, biological, and nuclear weapons as stated in paragraphs 22 of resolution 687 adopted in 8th of April 1991. Furthermore, this objective has no relation with the objective of enforcing sanction on Iraq as stated in 661 resolutions.

However, resolution 687 allowed Iraq, after eight months of total blockade to import foodstuff, medicine, and other civilian commodities under the approval of sanction committee mentioned above. Consequently, this was as stated in paragraph 20 as shown below:

"Decides, effective immediately, that the prohibitions against the sale or supply to Iraq of commodities products, other than medicine and health supplies, and prohibitions against financial transactions related thereto contained in resolution 661 (1990) shall not apply to foodstuffs notified to the Council Committee established by resolution 661(1990) ..., with approval of that committee, under the simplified and accelerated "no-objection" procedure, to and supplies for essential civilian needs as identified in the report of the Secretary-General dated 20 March 1991, and in any further findings of humanitarian need by the Committee." ^[1]

In 15th August 1991, the Security Council adopted 706 resolution permitting Iraq to export oil during a period of six months not more than \$ 1.6 billion. Third of which is to be designated to war compensation referred to in 687 resolution and U.N. expenses. In 19th September 1991, the Security Council adopted 712 resolutions regulating the distribution of \$ 1.6 billion between foodstuff and medicine. Thus, this is to be procured under full control of procurement and distribution of U.N. and U.N activities and compensation of war. In addition, escrow account of oil revenue is under control by the United Nations.

The agreement between Iraq and U.N. in New York towards the end of 1991 broke due to the very limited amount of oil revenue allocated to foodstuff and medicine compared with the need of the Iraqi people referred to in the report of the Secretary General mentioned above. The Iraqi people were deprived of obtaining their requirements after more than one year of total prevention of import of humanitarian commodities. Consequently, this was in addition to the large scale damage of Iraqi infrastructure during 1991 war. Also, it requires reparation, namely: water treatment, electricity, grain silos, educational institutions, schools, hospitals and so on, which were targeted during the military attack.

However, in response to paragraph 20 of 678 resolutions mentioned above, some countries released part of Iraqi frozen assets so as to enable them buy foodstuff and medicine. Thus, such countries include Switzerland (\$ 300 million), Britain (\$ 100 million out of one billion), Spain (\$ 20 million), Tunisia (\$ 20 million), Morocco (\$12 million), Italy (\$ 4 million), and Canada (\$1 million). Moreover, the United States Government refused to allow Iraq to buy food and medicine. This was despite the fact that the main bulk of frozen assets which exceeds two billion US dollar were in U.S.A. local banks.

In late 1992, the Security Council took harsh measure against Iraqi people by re-freezing again Iraqi assets. Thus, they asked countries to transfer Iraqi funds oil revenue available in their countries to the escrow account referred above according to 778 resolution (2nd October, 1992).

Iraq and U.N. agreed to export oil in amount of \$2 billion every six months (986 resolution, 1995) through oil-for-food program. It increased to \$ 5.2 billion in 1998. The limit was removed in 1999 and the program continued until the 2003 war of Coalition Forces led by United States against Iraq.

Contradicting Policy of Security Council against Iraq

Nine days after the eruption of military operation against Iraq in 2003, Security Council adopted 1472 resolution on the 28th of March. This resolution clearly indicated that imposing sanction on food, medicine, and humanitarian commodities were included in 661 (1990) violating Article 55 of Fourth Geneva Convention, the Hague Regulations, and international law.

Resolution 1472 stated in its preface:

"The Security Council,

Noting that under the provision of Article 55 of the Fourth Geneva Convention (Geneva Convention Relative to the Protection of Civilian Persons in the Time of War of August 12, 1949), to the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuff, medical stores and other articles if the resources of the occupied territory are inadequate."^[1]

In addition to that, this resolution stated:

"Acting under chapter VII of the Charter of the United Nation,

1-Request all parties concerned to strictly abide by their obligations under international law , in particular the Hague Regulations, including those relating to the essential civilian needs of the people of Iraq, both inside and outside;

2- Call on international community also to provide immediate humanitarian assistance to the people of Iraq..."^[1]

However, this clearly indicate that imposing comprehensive sanction and the preventing of Iraq from importing food and medicine is illegal according to article 55 of Geneva convention, Hague Regulation, and international law.

Evaluation of Security Council Policy of Imposing Sanction

Neither Article 41 of Charter VII of the United Nation Charter nor Geneva Convention (Article 55), Hague Regulation, and International Law permit the Security Council to impose comprehensive sanction on countries.

This can be seen in the case of Iraq during the thirteen years of sever sanction.

When Security Council permit Iraq to export oil to buy food and medicine, the council did not treat Iraq as other countries. In contrary, export of oil and import of foodstuff and medicine was controlled by U.N. The U.N fully controlled the process from the beginning of exporting the oil to transferring the value of the oil to the escrow account. Similarly, procurement of foodstuff and medicine as well as the distribution of these commodities was done under the approval and supervision of U.N.

Subsequently, sanction was lifted after achieving the objectives set in the resolutions of all the above motioned countries, except in the case of Iraq where Security Council changed its objectives to keep sanction in place until the fulfillment of the objectives of some members of the Security Council (U.S.A and Britain). Thus, this is aimed at changing political regime in Iraq. Sanction should have been lifted after Iraqi withdrawal from Kuwait according to 661 resolutions. Nevertheless, Security Council enforced new objective of destroying chemical, biological, and nuclear weapons. Sanction was kept on for thirteen years as a result of the objective declared by some members of the Security Council to remove the political system of Iraq. When the sanction failed to achieve this objective, war was waged against Iraq and its political system was removed. However, the major victim of this policy was the Iraqi people.

Impact of Sanction on Iraq

Sanction imposed on Iraq has damaged the Iraqi society. United Nation reports (Annex II of S/1999/356) submitted to the secretary general stated that:

1- Iraqis social and economic indicators were generally above the regional and developing country averages. GDP in 1989 stood at \$ 75.5 billion for population of 18.3 million. GDP growth had an average of 10.4% from 1979 – 1980. By 1988, GDP per capita totalled 3510 US dollar.

2- As highlighted by FAO which was approximately 79% to 97% at that time, Iraq had one of the highest per capita food availability indicators in the region. Dietary energy supply averaged 3120 kilo calories per day. Due to its relative prosperity, Iraq had the capacity to import large quantities of food, which met third of its requirements at an average estimated cost of 2.5 billion US dollar a year. Although, in poor production years, the food bill could rise to 3 billion.

3- According to WHO, prior to 1991b, health care reached up to approximately 79% of the urban population and 78% of rural residence. Thus, a major reduction of young child mortality took place from 1960 to 1990 with mortality rate at 65 per 1000 lives per birth in 1989 (1991 Human

Development Report). The average for developing countries was 76 per 1000 live births. UNICEF indicated that national welfare system was in place to assist orphans or children with disabilities and to support the poorest families.

4- As described by UNICEF, the government of Iraq made sizable investment in the education sector from mid-1970 until 1990. By 1989, the combined primary and secondary enrolment ratio stood at 75%. This is slightly above the average for all developing countries at 70%. As a result, illiteracy had been reduced to 20% by 1987 and education accounted for over 5% of the state budget in 1989. This was above the developing country average of 3.8%.

5- WHO estimates that 90% of the population had access to an abandoned collection and sanitary disposal.

After the impact of sanction:

1- “The Iraqi GDP may have fallen by nearly two-third in 1991, owing to an 85% decline in oil production in the devastation of the industrial and service sectors of the economy. Also, per capita income had fallen from 3416 US dollar to 450 US dollar in 1995.”^[1]

2- The maternal mortality rate increased from 50/100000 live births in 1989 to 117/100000 in 1997.

3- The dietary energy supply had fallen from 3120 to 1093 kilo calories per capita a day in 1994-95. The prevalence of malnutrition in Iraqi children under five almost doubled from 1991 to 1996 (from 12% to 23%).

4- “In addition to the scarcity of resources, malnutrition problems also stem from the massive deterioration in basic infrastructure, particularly water-supply and waste disposal system. The WFP estimates that access to potable water is currently 50% of the 1990 level in urban areas and only 33% in rural areas.”⁽²⁾

Accordingly, Iraqi people were put in a very sever humanitarian condition for thirteen years under illegal comprehensive sanction which deprived them from their daily basic requirement. One and half million Iraqi died, with more than one-third of them comprising of children. Thus, this was because the Security Council failed to protect the sufferings of human in Iraq for thirteen years.

Joy Gordon, an American writer, in her book titled “THE INVISIBLE WAR: The United States and Iraqi Sanction,” summarized the impact of sanction on Iraq as complete destruction of Iraq and Iraqi people. She stated: “What I want to explore now is the question of how human catastrophe of this magnitude came about: what policies and practices here that caused hundreds of thousands of deaths; decimated the health of several millions of children; destroyed the whole economy; made a shamble nation’s education and health care system; reduced sophisticated country, in which

much of the population lived as the middle class in the first world, to status of Fourth World countries- the poorest of the poor, such as Rwanda, Somalia, Haiti; in a society notable for its scientist, engineers, criminals, and black makers. These things do not come from blocking shipments of glue and laundry detergent, or even from building palaces. They are the result of measures that compromised the economy as a whole by broadly restricting imports in a society that was heavily dependent on imports: by restricting or undermining oil sale in an economy that was heavily dependent on oil sales for its gross domestic products (GDP); and by undermining the infrastructure-electricity production, telecommunications, transport, and water and sewage treatment- in an advanced industrialized society that was highly dependent on modern infrastructure.”^[3]

Sundy Pirger, the national advisor to President Clinton, stated in 1999 before the eruption Fox Storm of attacking Iraq; we have imposed the most pervasive sanction in the history of mankind and prevented Saddam Hussein from \$ 150 billion value of oil revenue not been used for building mass destruction weapons.

Therefore, the Security Council has failed to protect the human rights of Iraqis’ during thirteen years of imposing illegal sanction. Furthermore, "Sanction failed to force Iraq to withdraw from Kuwait as it was the object of Security Council resolution 661. It failed to force Iraqi people to topple their political regime under its hardship. This is the real objective of keeping sanction going on for thirteen years, not for dismantling Iraqi mass destruction weapon which the invasion of Iraq in 2003 proved to be clean from these weapons. The only victim of imposing sanction is people. International community and Security Council are called to abandon imposing comprehensive sanction in the future, whatever the objective is maimed to achieve.”^[4]

Consequently, Security Council is responsible for the impact of sanction on Iraq as stated before. Therefore, they have to take responsibility for compensating Iraq as a country and the Iraqis people whom have lost their lives and lived under human suffering of continuous sanction for thirteen good years.

Conclusion

This paper found that Security Council had no authority to impose comprehensive sanction according to 661(1990), and to prevent Iraq from importing food and medicine and other civilian commodities. Security Council violated Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949. However, this has led to the creation of large scale humanitarian crises in Iraq and resulted in hundreds of thousands of deaths, thereby damaging the whole society. Security Council is

obliged to compensate Iraq as a country and those individuals who were affected by the sanction.

References:

Security Council Report, Special UN Sanctions, Special Research Report, November 2013.

United Nation Report (1999). Annex II, S/1999/356.

Gordon Joy (2010). *Invisible War*. Harvard University Press, pg. 91.

Saleh Mohammed Mahdi (2015). Towards Abolishing Imposing Comprehensive Sanction: Sanction Damaged Iraqi Society and Food Ration System saved it from Famine. *Third International Conference on Advances in Social Science, Management and Human Behavior*, pg. 10-11.