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Sarah R. Denne

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RE-THINKING HUMANITARIAN AID IN THE POST-GULF WAR ERA: THE INTERNATIONAL COMMITTEE OF THE RED CROSS TAKES THE LEAD

Sarah R. Denne*

*It remains a cardinal humanitarian principle that innocent civilians—and above all the most vulnerable—should not be held hostage to events beyond their control. Those already afflicted by war's devastation cannot continue to pay the price of a bitter peace. It is a peace that will also prove to be tenuous if unmet needs breed growing desperation.*¹

INTRODUCTION

The cumulative effect of the more than nine-year sanctions on the Iraqi people during the 1990s was devastating. Nine years of economic, financial, and intellectual isolation caused enormous human suffering, especially among the young, women, and the elderly. The sanctions resulted in death and disease, broken lives, lost skills, violent crimes, prostitution, divorce, and family desertion, which have undermined the entire social and moral fabric of Iraqi society. The collapse of educational institutions produced higher levels of illiteracy and harmed an entire generation of children.²

Prior to the Gulf War, Iraq was a “high-middle-income country” with a large sector of the population inhabiting urban areas.³ Oil production was a dominant force in the Iraqi economy, accounting for ninety percent of

* B.A., Saint Vincent College (2005); J.D., Case Western Reserve University School of Law (2008). I would like to thank Professor Amos Guiora for his feedback, honesty, and invaluable support during the various stages of this note. I would also like to thank Victoria Marquard and Kevin Carter for their contributions and inspiration.

¹ Executive Delegate of the Secretary-General, *Report to the Secretary-General dated 15 July 1991 on Humanitarian Needs in Iraq*, para. 138, U.N. Doc. S/22799 (July 17, 1991), available at <http://documents-dds-ny.un.org/doc/UNDOC/GEN/N91/228/18/img/N9122828.pdf?OpenElement>.

² Evelyne Hong, *Globalisation and the Impact on Health: A Third World View*, THIRD WORLD NETWORK 60–64 (2000), available at <http://phmovement.org/pdf/pubs/phm-pubs-hong.pdf>.

³ Eric Hoskins, *The Humanitarian Impacts of Economic Sanctions and War in Iraq*, in POLITICAL GAIN AND CIVILIAN PAIN: HUMANITARIAN IMPACTS OF ECONOMIC SANCTIONS 91 (Thomas G. Weis et al. eds., 1997).

export earnings and sixty percent of the gross domestic product.⁴ Because Iraq was insulated geographically and relied on a single lucrative export, the country was vulnerable to the effects of economic sanctions that targeted oil production, among other things.⁵ While Iraq was not alone in its plight during the period of United Nations sanctions, the case of Iraq exemplifies the consequences of U.N. sanctions on the civilians of a target country.⁶

The focus of this Note is not to debate the effectiveness of economic sanctions, but rather to suggest a workable scheme by which humanitarian aid can be administered in the aftermath of comprehensive U.N. sanction regimes. My solution is to re-work the U.N. humanitarian system by creating a lead agency in the International Committee of the Red Cross (ICRC). Under this system, the ICRC will have full authority to make decisions regarding the organization of efforts and security in the field. Part I discusses the background surrounding the U.N. sanctions imposed against Iraq and the resulting humanitarian consequences. Part II describes the problems within the U.N. system and the United Nation's inadequate response to the crisis. Specifically, I address the controversial Oil-for-Food Program, the inefficient operations and arbitrary decision-making within the Iraqi Sanctions Committee, and the problems of mismanagement and lack of authority of humanitarian agencies in the field. Part III outlines the solution of creating a lead agency in the ICRC. First, I discuss how the ideology, structure, international acceptance, and status of the ICRC combine to address the precise shortcomings of the current U.N. system. Second, I propose how the ICRC can adequately address emerging security problems in the international humanitarian community. Overall, I focus on the benefits of having the ICRC as a lead agency and how this approach improves on recent attempts by the U.N. to strengthen the capacity, improve the efficiency, and regain the legitimacy of its humanitarian response.

I. BACKGROUND

A. *U.N. Sanctions Imposed on Iraq*

The United States responded to Iraq's invasion of Kuwait on August 2, 1990, by enacting Executive Order 12,722, declaring the situation in Iraq a national emergency, imposing an immediate embargo on Iraq, and

⁴ *Id.*

⁵ Paul Conlon, UNITED NATIONS SANCTIONS MANAGEMENT: A CASE STUDY OF THE IRAQ SANCTIONS COMMITTEE, 1990-1994 161 (2000).

⁶ See generally Johan Galtung, *On the Effects of International Economic Sanction, With Examples from the Case of Rhodesia*, 19 WORLD POL. Q.J. OF INT'L REL. 378 n.3 (1967); Thomas G. Weiss, *Sanctions as a Foreign Policy Tool: Weighing Humanitarian Impulses*, 36 J. PEACE RES. 499, 504 n.5 (1999).

freezing all Iraqi assets.⁷ The U.N. Security Council (Security Council) responded shortly thereafter by initiating economic sanctions against Iraq.⁸ On August 6, 1990, the Security Council adopted Resolution 661, which prohibited the export of all commodities and products from Iraq, the sale of commodities to Iraq (including military equipment), and the transfer of funds to Iraq.⁹ Additionally, Resolution 661 set up the Iraqi Sanctions Committee (ISC) to monitor the implementation of these sanctions.¹⁰ During the development of Resolution 661, there was some dissension among members of the Security Council about the inclusion of foodstuffs among items prohibited by the sanctions. In this way, Resolution 661 differed from previous sanctions regimes because the Security Council had never before listed foodstuffs as a prohibited category. Although Resolution 661 did not completely ban foodstuffs in all circumstances, a narrow exception allowed foodstuffs only in “humanitarian circumstances,” and this did little to alleviate qualms within the Security Council.¹¹

In September 1990, the Security Council discovered that the Iraqi government was misappropriating donations of food and medical supplies. Instead of distributing the aid to Iraqi civilians as directed by the United Nations, the Iraqi government used the aid to support its military.¹² In response to the misuse of humanitarian donations and the growing concern that the Iraqi government was not providing adequate care to its citizens, the Security Council passed Resolution 666. Resolution 666 addressed the problem of misappropriation by requiring that “foodstuffs should be provided through the [United Nations] in co-operation with the International Committee of the Red Cross or other appropriate humanitarian agencies and distributed by them or under their supervision in order to ensure that they

⁷ Christopher C. Joyner, *Sanctions, Compliance and International Law: Reflections on the United Nations' Experience Against Iraq*, 32 VA. J. INT'L L. 1, 19–20 (1991); Exec. Order No. 12,722, 55 Fed. Reg. 31,803 (Aug. 2, 1990).

⁸ Peter Wallensteen, Carina Staibano, & Mikael Eriksson, *UN Sanctions Against Iraq: Lessons Learned*, 5–6 (2005), available at http://www.smartsanctions.se/literature/iraqreport_050210.pdf.

⁹ See S.C. Res. 661, U.N. Doc. S/RES/661 (Aug. 6, 1990).

¹⁰ U.N. Sanctions Secretariat, Dept. of Political Affairs, *Smart Sanctions, The Next Step: Arms Embargoes and Travel Sanctions*, 1, 4 (Dec. 3–5, 2000) (paper presented at the Second Expert Seminar, Berlin), available at <http://www.un.org/sc/committees/sanctions/overview.pdf>.

¹¹ Paul Conlon, *Lessons From Iraq: The Functions of the Iraq Sanctions Committee as a Source of Sanctions Implementation Authority and Practice*, 35 VA. J. INT'L L. 633, at 634–35 (1995).

¹² See U.N. SCOR, 4th Sess., 2939th mtg., at 12–13, 19, 25, U.N. Doc. S/PV.2939 (Sept. 13, 1990); See also *Sacks v. Office of Foreign Assets Control*, 466 F.3d 764, 768 (2006).

reach the intended beneficiaries.”¹³ The ISC had discretionary authority to determine whether “urgent” need existed that required immediate distribution of foodstuffs to Iraqi civilians. If the need existed, the Committee was required to “report promptly” in formulating a plan on how to deal with the urgent humanitarian situation.¹⁴

After the U.S.-led military campaign against Iraq, the Security Council adopted Resolution 687 to set forth the terms of peace.¹⁵ Resolution 687 had far-reaching effects, including defining U.N. involvement in Iraq for over a decade following its adoption in 1991. The Resolution set forth measures intended to bring peace and security to the region, while at the same time keeping in place many of the enforcement measures from Resolutions 661 and 666—namely sanctions and the authorization to “use all necessary means” for Iraqi compliance.¹⁶ Resolution 687 differed slightly from 661 and 666 in that Resolution 687 allowed an exemption for foodstuffs and supplies “deemed essential to civilian needs,” whereas 661 and 666 permitted this type of aid only in humanitarian circumstances. Although Resolution 687 was intended to improve upon previous sanctions by eliminating restrictions on humanitarian aid objected to under 661 and 666, there is little difference between an exemption where supplies are “essential to civilian needs” and an exception to a prohibition “except in humanitarian circumstances.” If Resolution 687 added anything to previous sanctions, it was increased regulation of humanitarian goods. Resolution 687 neither increased efficiency nor eliminated arbitrary decision-making within the ISC.¹⁷

¹³ S.C. Res. 666, para. 6, U.N. Doc. S/RES/666 (Sept. 13, 1990); Sacks, 466 F.3d 764, 768; See also Joyner, *Sanctions, Compliance and International Law*, *supra* note 7, at 9 (describing S.C. Res. 666 as the response to “humanitarian concerns” about lack of foodstuffs for Iraqi civilians and how 666 established guidelines intended to “govern international humanitarian assistance”).

¹⁴ Conlon, *supra* note 11, at 636; S.C. Res. 666, *supra* note 13, para. 5.

¹⁵ See Wallenstein, Staibano & Eriksson, *supra* note 8, at 6; See generally S.C. Res. 687, U.N. Doc. S/RES/687 (Apr. 8, 1991) (discussing the need for peace and security in Kuwait and Iraq).

¹⁶ S.C. Res. 687, *supra* note 15; see U.N. Sanctions Secretariat, *supra* note 10, at 5.

¹⁷ See S.C. Res. 687, *supra* note 15; see also Conlon, *supra* note 11, at 645–48. The purpose behind 687 was to expedite humanitarian items through an “accelerated no-objection procedure.” This procedure expedited all materials deemed non-controversial, without review by the Sanctions Committee. The only issues that would appear before the ISC would be those articles and supplies that had some tentative objection. See *id.* at 647–48. This solution resulted in criticism by member states attempting to export goods through this procedure, claiming that the process led to arbitrary application. Many members noted that much decision-making was still done on a case-by-case basis and that often the result was that an item had been both rejected an approved on different occasions. The ISC addressed these concerns in 1992, but the result amounted to giving favorable status to certain items that

B. *The Humanitarian Crisis*

Initially, the international community looked favorably on the sanctions imposed on Iraq because the comprehensive sanctions were intended as a short-term policy strategy to pressure Iraq into withdrawing from Kuwait. Even after the U.S. invasion forced Iraq to withdraw, support remained for the sanctions as a policy tool to compel Iraqi compliance with disarmament and other U.N. resolutions in place at the time. However, a measure initially intended to apply political pressure to the government of Iraq caused great suffering to the most vulnerable section of Iraqi society. Ironically, those hardest hit by the sanctions were children, the elderly, the sick, and the poor—those with the least power to influence policy or change in the government.¹⁸

Sanctions prevented Iraq from obtaining imports of food, agricultural and structural supplies, and medicine necessary to sustain society. In 1990, the sanctions cut off food subsidies and loan guarantees formerly provided by the United States.¹⁹ Without the aid of imports from other countries, Iraq had to procure its own medicine, food, and supplies in order to maintain the pre-war standard of living and prevent a devastating humanitarian crisis.²⁰

Although the sanctions against Iraq were viewed initially as “innovative and nonviolent tools of international coercion,”²¹ their actual effect left the innocent civilian population to withstand the worst of deteriorating economic circumstances caused by the sanctions. The combination of the Gulf War and both economic and financial sanctions, including a ban on

were never really blocked in the first place. Thus, the arbitrary application by the ISC of exports to Iraq persisted. *See id.* at 649.

¹⁸ Global Policy Forum, *Iraq Sanctions: Humanitarian Implications and Options for the Future*, (Aug. 6, 2002), available at <http://www.globalpolicy.org/security/sanction/iraqi/2002/paper.htm>.

¹⁹ Executive Delegate of the Secretary-General, *supra* note 1, at para. 17. Before the sanctions, Iraq received \$5 billion in food subsidies since 1983, \$141 million in direct export subsidies in 1985, and \$2.5 million in export loan guarantees since 1988. *Id.*

²⁰ *Id.* Prior to sanctions, Iraq was the twelfth largest purchaser of U.S. agricultural products and the single largest importer of U.S. rice. *Review Iraqi Agriculture: From Oil for Food to the Future of Iraqi Production, Agriculture and Trade: Hearing Before the H. Select Comm. on Agriculture*, 108th Cong. 4, 26 (2004) (Statements of Rep. Charles Stenholm and John King, Vice Chairman, USA Rice Council). Iraq imported approximately \$360 million worth of drugs and medical supplies annually from various countries. Due to the embargo, all of these imports were restricted. Executive Delegate of the Secretary-General, *supra* note 1, at para. 17.

²¹ Christopher Joyner, *United Nations After Iraq: Looking Back to See Ahead*, 4 CHI. J. INT'L L. 329, 338 (2003) ([M]easures that initially were intended as a means to apply nonviolent economic pressure on the Iraqi government deteriorated into an aggravated humanitarian crisis for nearly all of Iraq's society.”).

international oil sales and freezing of Iraqi assets, had a profound effect on the living conditions in Iraq. Civilians were deprived of necessary medicines and foodstuffs critical to their survival, and water quality and the availability of utilities decreased significantly.²² The damage to water treatment plants during the Gulf War, combined with the inability to obtain spare parts due to restrictive sanctions, led to a significant decrease in suitable water.²³ Raw sewage flowed in the streets of several cities due to a badly damaged national sewage system.²⁴ The food supply began to deteriorate quickly and lower than normal harvest yields caused inadequate nutrition. The situation worsened because sanctions already restricted imports of agricultural products and foodstuffs. The government rationing system in place was at best able to supply about one-third of a normal family's food supply resulting in a shockingly low level of dietary intake.²⁵ With the resulting health crisis caused by the lack of clean water and severe food shortages throughout Iraq, the population was also not able to receive adequate medical care. The main problem was that health programs were desperate for supplies and spare parts to maintain machinery—which were simply not available—causing a forced decrease in health care activities available to the public.²⁶

Several reports by humanitarian agencies published in the 1990s attempted to bring to light the increasingly deteriorating conditions in Iraq.²⁷

²² *Id.*

²³ Executive Delegate of the Secretary-General, *supra* note 1, at para. 16. Approximately 2.5 million Iraqis were cut off from a clean water supply, while the 14.5 million Iraqis who continued to receive suitable water were forced to live on one quarter the amount they received before the war. *Id.*

²⁴ *Id.* The raw sewage led to an increase of diarrhoeal diseases and outbreaks of typhoid and cholera. *Id.*

²⁵ *Id.* The harvest yielded only a third of the previous year's crop, causing alarmingly levels of inflation for daily staples such as wheat and rice. *Id.*

²⁶ *Id.* at para. 17. Lack of spare parts, deficient maintenance, decreased power generation and lack of telecommunications led to a deterioration of medical equipment. After the Gulf War, power generation was barely functioning and five months later the power generation produced only forty percent of the pre-war levels. Also, a majority of phone lines were either beyond repair or severely damaged. All international telecommunications were out of service as of July 1991, a period when health and humanitarian assistance from international actors was most needed. *Id.* at paras. 20–21.

²⁷ See generally UNICEF, *The Status of Children and Women in Iraq*, (1995), <http://leb.net/bcome/iraw/unicef.html>; UNICEF, *Humanitarian Situation in Iraq: Sub-Commission Decision 1997/119*, U.N. Doc. E/CN.4/SUB.2/EC/1997/119, (1997); Press Release, Food and Agriculture Organization of the United Nations, *FAO Warns of Danger to Near East if Outbreak of Animal Diseases in Iraq is Not Contained—Situation Could Threaten Near East Food Security*, U.N. Doc. 99/04 (Feb. 10, 1999), available at http://www.fao.org/WAICENT/OIS/PRESS_NE/PRESSENG/1999/pren9904.html (last visited Sept. 7, 2007); see also Joyner, *supra* note 21, at 338 (describing the studies).

The Food and Agriculture Organization (FAO) released findings that the infant mortality rate doubled and the mortality rate for children under five had increased six-fold since the implementation of the sanctions.²⁸ In March 1991, the Under-Secretary-General, and former president of the United Nations, reported on the dangerous situation in Iraq. Ahtisaari stated “most means of modern life support [had] been destroyed” and described Iraq as “relegated to a pre-industrial age, but with all the disabilities of post-industrial dependency on an intensive use of energy and technology.”²⁹

A report to the U.N. Secretary General in July 1991 reported on specific aspects of the crisis and made recommendations on how to alleviate it. The report estimated that the total cost to sustain the Iraqi population was \$6.8 billion for one year and \$2.63 billion for only four months.³⁰ Even at a lower level of production, the report recognized that the resources required could not be obtained through any U.N.-sponsored assistance program.³¹ Interestingly, the report noted that Iraq could sustain itself if the United Nations eliminated or decreased the sanctions imposed on Iraq, allowed the unfreezing of Iraqi assets abroad, and allowed Iraq to produce and sell oil at pre-war output levels.³² Generating this type of revenue could have allowed Iraq to rebuild and alleviate the already dire humanitarian crisis. Furthermore, the government of Iraq had agreed to meet the demands of the deteriorating civilian population and infrastructure. Iraq offered to make documentation of oil sales and purchases completely transparent and available for the United Nations to inspect. The report recommended that the United

²⁸ World Health Organization, *Health Conditions of the Population in Iraq Since the Gulf Crisis*, § 4 (Mar. 1996), at <http://www.who.int/disasters/resource/pubs/000396.html>; see also Joyner, *United Nations After Iraq*, *supra* note 21, at 339 (describing findings).

²⁹ Under-Secretary-General for Administration and Management, *Report to the Secretary-General on Humanitarian Needs in Kuwait and Iraq in the Immediate Post-crisis Environment*, para. 8, U.N. Doc. S/22366; see also Global Policy Forum, *supra* note 18.

³⁰ Executive Delegate of the Secretary-General, *supra* note 1, at para. 29.

³¹ *Id.* at para. 30. At the time of the report, the United Nations had only received \$210 million for humanitarian assistance in Iraq, and the majority of funds were earmarked for providing relief to refugees. *Id.*

³² *Id.* at para. 31. The report suggested that the Security Council allow the free-flow of imports such as supplies and machinery parts to make repairs. This is also the first time the recommendation was made to allow Iraq to produce and subsequently sell its oil to purchase necessary supplies and foodstuffs, a plan that was the basis of the “Oil-for-Food Program” discussed below. The report estimated that if Iraq was permitted to produce 1 million barrels of oil, Iraq could make a net profit of \$5.5 billion. In order to obtain this level of production, however, oil facilities would need to be restored to their pre-war functional levels. This could only be achieved by importing a significant number of spare parts currently banned by sanctions. *Id.* at para. 33.

Nations supervise and make periodic reports on the situation, but unfortunately, no such plan was adopted at the time.³³

II. PROBLEMS IN PROGRAM AND SANCTIONS MANAGEMENT

In the midst of Iraq's large-scale humanitarian crisis, various problems in U.N. program and sanctions management prevented alleviation of the deteriorated living conditions. First, the U.N. "Oil-for-Food Program" was only mildly successful and could not provide a comprehensive solution to the problem. Second, sanctions management within the ISC was frustrated by a lack of standards and lengthy decision-making. Stifled decision-making within the ISC regarding goods going into Iraq was problematic because Iraq was in the midst of a considerable humanitarian crisis, caused by the very sanctions that the ISC struggled to implement. Lastly, conflict and confusion of authority on the ground in Iraq between U.N. relief agencies, non-governmental organizations (NGOs), and other humanitarian organizations only added to an already desperate situation.

A. *Response to the Humanitarian Crisis: Oil-for-Food*

Nearly five years after the humanitarian crises had been documented and highly publicized, and in response to growing criticisms of the sanctions regime, the Security Council passed Resolution 986, establishing the Oil-for-Food Program (Program).³⁴ Although The Program provided some alleviation, it fell short of totally eradicating the economic implications of the sanctions. Not only was the Program highly unpopular, but it also showed that Iraq faced a long and difficult struggle to regain its economic independence and sustainability.

The goal of the Program was to buy humanitarian goods and supplies by exporting Iraqi oil to finance the purchase of food, medicine, and supplies for infrastructure rehabilitation.³⁵ Additionally, funds from The Program were used to pay war reparations owed to Kuwait and salaries of U.N. officials charged with administering Program operations.³⁶ Though

³³ *Id.* at para. 34. Allowing the United Nations to inspect documents of crude oil sales and purchases made would have been a simple procedure because U.S. banks kept all revenues from oil sales in Iraq. *Id.*

³⁴ See S.C. Res. 986, para. 1, U.N. Doc. S/RES/986 (Apr. 14, 1995); see generally U.N. Sanctions Secretariat, Department of Political Affairs, A Brief Overview of Security Council Applied Sanctions 7-8 (2000), available at <http://www.un.org/sc/committees/sanctions/overview.pdf> (discussing Oil-for-Food arrangements).

³⁵ See U.N. Office of the Iraq Programme, Oil-for-Food: About the Programme (Nov. 3, 2003), <http://www.un.org/Depts/oip/background/fact-sheet.html>.

³⁶ See Reem Bahdi, *Iraq, Sanctions and Security: A Critique*, 9 DUKE J. GENDER L. & POL'Y 237, 238 (2002); see also U.N. Office of the Iraq Programme, *supra* note 35 (specify-

originally intended as a temporary measure to relieve the suffering of the Iraqi people, the Program continued for thirteen phases until its eventual termination in November 20, 2003.³⁷

In order to purchase necessary humanitarian supplies, Iraq was required to provide a list of goods and supplies that it intended to purchase. Ultimately, the ISC decided whether to authorize specific requests for purchases made by Iraq from another country. The ISC evaluated all requests for items on a case-by-case basis. If approved, the ISC released the funds from an escrow account set up specifically for the Program in New York. Upon delivery in Iraq, the country exporting the approved goods and supplies was paid out of the escrow account. Once the goods arrived in Iraq, the United Nations oversaw distribution in northern Iraq and other U.N. agencies distributed the goods in the central and southern parts of the country.³⁸

Unfortunately, the Program seemed to work more in theory than in practice. The Iraqi government was not satisfied with the functioning of the Program and criticized it as interfering with Iraqi sovereignty. In a letter to the Security Council in April 1998, Iraq's Deputy Prime Minister demanded an immediate lifting of the sanctions, while journalists in Iraq published articles criticizing the Program and its effects.³⁹ The objection by Iraq was not surprising because the United Nations controlled every aspect of the Program and gave Iraq no control over the purchases made with its oil export earnings.⁴⁰ Nearly six years after the Program's implementation, Iraq had successfully exported about \$64 billion in oil. The value of the exported oil is not nearly as remarkable when compared to the value of goods that actually reached the hands of Iraqi civilians. For example, out of the \$64 billion exported in those first six years, only \$28 billion worth of foodstuffs,

ing the percentages of allocation of the funds: 72% for humanitarian supplies, 25% for repairs, 2.2% for administrative costs, and 0.8% for weapons inspection program).

³⁷ U.N. Office of the Iraq Programme, *Oil-for-Food: About the Programme, Implementation of Oil-for-Food: A Chronology*, <http://www.un.org/Depts/oip/background/chron.html> (last visited Aug. 30, 2007); U.N. Office of the Iraq Programme, *Oil-for-Food: About the Programme, Phases of the Programme*, <http://www.un.org/Depts/oip/background/chron.html> (last visited Sept. 13, 2007); See also U.N. Sanctions Secretariat, *supra* note 10, at 7.

³⁸ See Press Release, Testimony of Robert Werner, Dir., U.S. Dep't of the Treasury, to the Permanent Subcomm. on Investigations Comm. on Homeland Sec. and Governmental Affairs (Oct. 31, 2005), available at <http://www.ustreas.gov/press/releases/js2998.htm>.

³⁹ Douglas Scott, *The Practical Effect of the Iraqi Oil-for-Food Program*, 25 DISARMAMENT DIPLOMACY (Apr. 1998), available at http://www.fas.org/news/iraq/1998/04/980400_ds.htm; Barbara Crossette, *Iraq Again Threatens to Halt Arms Inspectors*, N.Y. TIMES, Apr. 24, 1998, at A3; Lea Carol Owen, *Between Iraq and a Hard Place: The U.N. Compensation Commission and its Treatment of Gulf War Claims*, 31 VAND. J. TRANSNAT'L L. 499, 543 (1998).

⁴⁰ See Scott, *supra* note 39.

equipment, and supplies actually arrived to Iraq.⁴¹ Included in that estimate are goods such as spare oil parts and other goods not directly consumed by civilians.⁴²

Although the Program improved the humanitarian situation in Iraq somewhat, it did not entirely alleviate the humanitarian crisis.⁴³ By 1997, the international community began to realize that the Program could only achieve limited success while sanctions were still in place.⁴⁴ Interestingly, the Program did not provide for a way to supplement the goods coming into Iraq under the Program with humanitarian donations. It is a wonder no humanitarian donations system was put in place or even contemplated, considering that the estimated cost to return Iraq to pre-war productivity levels was almost \$7 billion for one year.⁴⁵ Recall that the Program produced, on average, \$4.7 billion per year over a six-year span.⁴⁶ This is nearly half the amount estimated to successfully alleviate the crisis and return Iraq to pre-war levels of functionality. This clear deficiency is evidence that the Program, albeit mildly successful in alleviating some of the most disastrous and immediate effects caused by the sanctions, inevitably left the Iraqi population to suffer long-term inadequate living conditions.

B. *Operations and Problems Within the ISC*

When the U.N. Security Council passed Resolution 661 and thus imposed mandatory economic sanctions against Iraq, it simultaneously created the ISC to carry out a number of subsidiary tasks connected with the

⁴¹ Joyner, *United Nations After Iraq*, *supra* note 21, at 342.

⁴² *Id.* Taking into account smuggling of goods into Iraq and Iraq's own limited production, the Program only produced a per capita income that was at or below the poverty line established by the World Bank—one dollar per day. *Id.*

⁴³ *Id.* at 343. The U.N. Secretariat reported in November 2000 that the Program “was never intended to meet all the humanitarian needs of the Iraqi population” nor was it meant to solve longer-term issues such as increasing the standard of living and dealing with an ongoing shortage and lack of quality in healthcare. The Secretary-General, *Report of the Secretary-General Pursuant to Paragraph 5 of Resolution 1302*, U.N. Doc. No. S/2000/1132, para. 5 (Nov. 29, 2000), available at <http://daccessdds.un.org/doc/UNDOC/GEN/N00/760/04/PDF/N0076004.pdf?OpenElement>.

⁴⁴ The U.N. High Commissioner for Human Rights reported that “the embargo still in force was seriously jeopardizing the health and nutritional state of the civilian population of Iraq, especially children, women and the most underprivileged sectors of the population.” U.N. High Comm’r for Human Rights, “Humanitarian Situation in Iraq,” Sub-commission decision 1997/199, available at <http://www.unhcr.ch/Huridocda/Huridoca.nsf/554221922d46153bc1256991004a440b/7832b764656b66cf80256681004d4981?OpenDocument> (last visited Nov. 5, 2007).

⁴⁵ Executive Delegate of the Secretary-General, *supra* note 1, at para. 29.

⁴⁶ This figure comes from the \$28 billion in usable goods and supplies that came into Iraq as a result of the Program, and broken down over a period of six years. See Joyner, *United Nations After Iraq*, *supra* note 21, at 342.

sanctions. The Security Council created the ISC in order to funnel sanctions activities and decisions into a more streamlined, specialized sub-organ of the Council.⁴⁷ The Security Council granted the ISC a significant amount of authority to make decisions regarding the distribution and administration of humanitarian affairs under the sanctions, while also giving the ISC power to grant exemptions from general export bans. With a mixture of general and specific functions, the ISC was responsible for two logically and organizationally unrelated tasks, enforcement of a trade control regime and mitigation of that regime for humanitarian purposes. This “Jekyll and Hyde” situation persisted throughout the sanctions regime in Iraq and resulted in a frustration of the ISC’s success in implementing the sanctions.⁴⁸

The two diametrically opposed tasks of the ISC—enforcing a comprehensive export ban and alleviating a humanitarian crisis—led to considerable problems within the U.N.-created body. An overwhelming number of “blocks” and “holds” nearly suffocated the timely administration of the export ban, while the use of humanitarian waivers was fraught with turmoil and abuse. Adding to these problems was the ISC’s policy of non-transparency and a general practice of member countries acting out of economic self-interest, instead of a collective interest geared toward lessening the humanitarian situation.

The ISC’s approval process for exports going into Iraq was complicated and usually drawn-out due to the convoluted system of “blocks” and “holds.” Upon receiving a request from a country to export a shipment of goods, each member of the ISC was invited to review and make objections to the request. In the rare case that no member of the ISC objected, an “authorization letter” was sent to the exporting country, expressly granting approval for the shipment. More than likely, a member would contest the request and place on it either a “block” or “hold.”⁴⁹ Interestingly, the difference between the two was slight: a member used a “hold” when expecting to approve the item, but wanted more time to deliberate and research, while a “block” was nearly a total rejection of the proposed request. The ISC discussed both blocked and held items at subsequent meetings, where contesting members explained their objections to the request. While the remaining members sometimes attempted to dissuade the objecting member, it was the usual and unfortunate case for the objecting member to remain unconvinced. Because every request through the ISC required unanimous approval, a single objecting member could prevent approval of a shipment of goods.⁵⁰

⁴⁷ Conlon, *supra* note 11, at 633–34.

⁴⁸ *Id.* at 638.

⁴⁹ Conlon, *supra* note 5, at 32–33.

⁵⁰ *Id.* at 32–33.

Eventually, the ISC became overwhelmed by the sheer number of blocks and holds that a single meeting was not sufficient to address all requests that had arisen since the previous meeting. Since the majority of ISC meetings were devoted to debating blocked items, innumerable requests were placed on hold indefinitely. The ISC could not keep up on the large backlog of unapproved items on hold, resulting in countries waiting months, and even years, for an answer to a request that was more likely than not rejected in the end.⁵¹ In this way, the ISC was a victim of self-imposed formality and procedure.

The second criticism of the ISC involved the use of “humanitarian waivers” to fulfill its directive to improve the humanitarian situation in Iraq. The ISC developed the waivers—set forth in Resolution 666—in order to increase efficiency within the ISC for approving requests to export humanitarian goods to Iraq. In practice however, the use of the waivers resulted in more abuse than success.⁵²

The humanitarian waivers created four categories of exceptions: (1) medicines, (2) foodstuffs, (3) items deemed humanitarian if no delegate objected, and (4) no-objection items.⁵³ If a country wished to ship goods in the medicine category to Iraq, the country was not required to notify the ISC. Notification was required, however, for the three remaining categories. Additionally, even though a country wishing to import medicine was not *required* to notify the ISC of a shipment, notification became necessary because clearance from the ISC helped in customs processing and shipping formalities. Although supposedly distinct, the difference in the characterization of a “humanitarian” versus a “no-objection” item was slight, and the resulting characterization could be fatal. The ISC could reject no-objection items for any reason, while humanitarian items were looked upon more favorably.⁵⁴

Regardless of the designation, an entity wishing to ship goods to Iraq under the humanitarian waiver procedure was still subject to a somewhat inefficient bureaucratic process. First, with respect to goods deemed humanitarian and no-objection items, the process in the ISC was not an im-

⁵¹ See Conlon, *supra* note 5, at 33.

⁵² *Id.* at 59–60.

⁵³ *Id.* at 60. Medicines included medical supplies for humans in their “end-user form” like drugs and bandages, while items like surgical equipment were usually not included. Foodstuffs included products for human consumption such as wheat, cereals, and beverages (including beer), but did not include cigarettes or liquor. Items deemed humanitarian included civilian clothes, shoes, and blankets, packaging materials, soap, and books and materials for education. No objection items included animal vaccines and feed, vials, Petri dishes, and food preservatives like casein and emulsifying salts. *Id.* at 60–62.

⁵⁴ See Conlon, *supra* note 5, at 61–62 (explaining the process of importing medicine and other no-objection items).

provement over what was already in place for blocks and holds. When the ISC members met to discuss an objection to a good deemed humanitarian or any other no-objection good, most members were silent while the objecting member gave reasons for not wanting to approve the particular good. As before, one objecting member of the ISC could trump the will of the overwhelming majority.⁵⁵ Furthermore, the decision-making process was never refined to make it more practical and efficient. For instance, there were no distinct criteria to guide decisions once it was determined that a particular good fell into one of the four categories. Regardless of designation, the end-use and end-user was determinative of the final decision. For example, the ISC denied a United Nations Children's Fund (UNICEF) shipment of health kits because a member of the ISC objected that scissors could possibly be used as weapons.⁵⁶ The ISC approved similar items in one instance and rejected in another based on how the exporting country initially described the request. Needless to say, the ISC developed a reputation for making arbitrary decisions.⁵⁷ Paul Conlon, former deputy secretary of the ISC, described the process of issuing humanitarian waivers as "fraught with intellectual dishonesty . . . and inconsistency in positions thinly tempered with pedantic legalistic arguments."⁵⁸ Conlon took issue with member states making decisions based on their individual stake in the outcome.⁵⁹ Overall, Conlon believed that the ISC "failed to prevent the abuse of humanitarian waivers, it failed to help the civilian population . . . , it failed to create any doctrine or to systematize its practice, and thus it failed to create any positive legacy for future development of humanitarian mitigation norms in sanctions regimes."⁶⁰

C. *Problems in the Field: Ineffective U.N. Coordination*

While the ISC struggled to implement sanctions and improve the humanitarian situation from Geneva, the situation was exacerbated by a lack

⁵⁵ *Id.* at 64.

⁵⁶ *Id.* at 21.

⁵⁷ *See id.* at 70. Indeed, sometimes the decisions about certain goods were blatantly wrong. For instance, in 1990, the ISC refused to approve a donation to Iraq from United Nations Relief and Works Agency (UNRWA)—a legitimate humanitarian agency. *Id.* at 77. Interestingly enough, as of 1994, the United States had been cleared for \$13,490,209 worth of exported goods into Iraq—an acceptance rate of 100%. However, countries like Romania (2.28% acceptance rate) and the Philippines (0% acceptance rate) had a much harder time getting items approved by the ISC. *Id.* at 68–69.

⁵⁸ Conlon, *supra* note 5, at 80.

⁵⁹ *Id.* Information from a 1994 report on waiver clearances does much to support this fact. Permanent members of the U.N. Security Council maintained a 92.81% acceptance rate, while non-member states retained a 37.61% acceptance rate. *Id.* at 68–69.

⁶⁰ *Id.* at 80.

of coordination and general sense of confusion on the ground in Iraq. Amongst the numerous U.N. organizations, NGOs, and other relief agencies working in the field, no one agency or entity was granted ultimate decision-making authority. Relief agencies were left to their own devices to deal with inter-agency politics and concerns of the local government. The lack of coordination and authority structure did little to streamline relief efforts that were desperately needed to help the Iraqi population recover from the deteriorated living conditions during the period of U.N. sanctions.

Among the myriad of varied organizations involved in providing aid on the ground, conflicting mandates and operating procedures stifled the provision of aid and led to frequent clashes of authority. Among the U.N. agencies involved on the ground were UNICEF, the United Nations High Commissioner for Refugees (UNHCR), the United Nations World Food Program (WFP), and the United Nations Disaster Relief Organization (UNDRO), to name a few. To add to the confusion, national and international NGOs along with private relief organizations increased the size of the relief effort.⁶¹ The sheer volume of aid workers involved in the large-scale relief operation made it difficult to divide labor into a workable scheme.

The size of the relief effort and lack of identifiable authority contributed to a general frustration of the decision-making process. In the unlikely event that agencies were able to come to a consensus on an issue, implementation was difficult and often protracted. Decision-making was invariably slow because important decisions, especially in the case of U.N. agencies, had to be approved by each agency's headquarters prior to implementation.⁶² To compound this issue, the staff members in the field were not certain which entity had authority to implement changes to existing operations. For example, several U.N. agencies (UNDRO, WFP, and UNHCR) collectively decided to increase the sugar ration. Though the increase was slight—from ten grams to fifteen grams per day—approval was required. UNDRO first made the request at its headquarters in Geneva. From there, UNDRO officials passed the request to the WFP in Rome, which deferred to the UNHCR back in Geneva. The request was denied after nearly a month.⁶³

Throughout the crisis, the many U.N. agencies, NGOs, and private relief organizations failed to establish a functional scheme of hierarchy that could apply to all agencies working in the field. The United Nations made several attempts to coordinate its own agencies in the field, but these attempts failed because the plans were obscure and only added to the confu-

⁶¹ See generally Larry Minear et al., *United Nations Coordination of the International Humanitarian Response to the Gulf Crisis 1990–1992 (Occasional Paper 13)*, at 8 (Thomas J. Watson, Jr. Institute for Int'l Studies 1992) (explaining the lack of coordination and general sense of confusion on the ground in Iraq).

⁶² See *id.* at 9–10.

⁶³ *Id.* at 8–9.

sion. Instead of correcting the flawed system already in place, the United Nations simply planted authority figures from Geneva into the region, poorly equipping them with a meaningless title and no substantive knowledge of the conflict operations.

The best example of this is the development of an “Action Plan” by the United Nations. The Action Plan supposedly created a “lead agency” in the UNHCR, but this lasted only a short time before roles became confused. For instance, the United Nations sent Resident Coordinators (the designated representatives for the Secretary General in a given country) to Iraq, who were theoretically in charge of the UNHCR. At the same time, the United Nations also sent Senior U.N. Emergency Members (SUNEMs) to Iraq, to serve directly under Resident Coordinators. But since both Resident Coordinators and SUNEMs were responsible for coordination, their respective roles were never clarified. The UNHCR had to determine which, if any, decisions it had authorization to make or whether it should defer to a Resident Coordinator or a SUNEM. For individuals working in the field and Iraqi government officials, this problem was exacerbated.⁶⁴ Soon after it became apparent that the United Nations could not create an effective organizational system in the field, agencies began to vie for a limited number of contracts with the local government. This created competitive and adversarial relationships between agencies that should have been working together towards a common goal. The Iraqi government faced similar confusion, as it dealt with each agency separately and on varying terms.⁶⁵

III. SOLUTION: CREATING A LEAD AGENCY IN THE INTERNATIONAL COMMITTEE OF THE RED CROSS

The United Nations failed to adequately deal with the humanitarian situation caused by the imposition of comprehensive sanctions against Iraq. Inadequacy of the Oil-for-Food Program, issues within the Iraqi Sanctions Committee, and mismanagement on the field demonstrate the need to reform U.N. sanctions and crisis management. Arguably, all aspects of U.N. operations and procedure in Iraq should be modified to deal with future crises. This Note, however, deals with the latter problem of the U.N. response: mismanagement of humanitarian field operations of agencies on the ground. I argue that the International Committee of the Red Cross (ICRC) should be designated as the lead agency in all future humanitarian crises

⁶⁴ See *id.* at 8–12.

⁶⁵ See *id.* at 19–20. Because the agencies could not effectively coordinate their efforts, negotiation with the local government authorities became a free-for-all. For example, in 1991 before the U.S. invasion of Iraq, the SUNEM negotiated with Syria to build a camp for refugees that were expected to flee from Iraq to Syria once the U.S.-led attack began. Although the government agreed, it was soon bombarded with agencies competing to provide relief for refugees at the camp. *Id.* at 18.

where the United Nations is intimately involved in both sanctions regulation and management of the humanitarian needs of a target state. Strengthening the already prominent role of the ICRC will increase efficiency and coordination in providing humanitarian aid to distressed populations and should adequately address the emerging security risks that aid workers encounter in the field.

A. ICRC as the U.N.-designated Lead Agency

In 2005, in response to concerns about the quality and effectiveness of the U.N. humanitarian response, the United Nations set out to develop more predictable, efficient, and effective humanitarian operations, and to build the capacity and technical expertise necessary to fill gaps in critical sectors and common services.⁶⁶ The United Nations decided to implement “clusters” which assigned the responsibilities for key sectors of a relief operation to different U.N. agencies.⁶⁷ In each sector within a country, the United Nations established a Humanitarian Country Team and a Humanitarian Coordinator (HC), where cluster lead agencies must report to Country Teams and HCs, as well as to their respective agency heads. HCs were responsible for maintaining links with government, local authorities, and state institutions.⁶⁸ As of 2005, the United Nations has implemented the cluster approach in Liberia, Uganda, Pakistan, Lebanon, and the Congo, and pledged to use the approach in all “new major disasters.”⁶⁹

Although the United Nations has only recently employed the cluster approach, authorities in the international community are already questioning

⁶⁶ See U.N. Econ. & Soc. Council, *Strengthening of the Coordination of Emergency Humanitarian Assistance of the United Nations*, para. 3, U.N. Doc. E/2005/L.19 (July 13, 2005) (draft resolution submitted by Vice-President of the Council, Johan Verbeke); see also Office for the Coordination of Humanitarian Affairs, *Cluster 2006—Appeal for Improving Humanitarian Response Capacity* (Mar. 3, 2006), available at <http://ochaonline.un.org/cap/webpage.asp?Page=1355> [hereinafter OCHA].

⁶⁷ *Id.*; see also Inter-Agency Standing Comm. *Guidance Note on Using the Cluster Approach to Strengthen Humanitarian Response* (Nov. 24, 2006), <http://www.humanitarianinfo.org/iasc/content/news/newsdetails.asp?newsid=53&publish=0> [hereinafter IASC]. At the country level, clusters “aim to strengthen humanitarian response by demanding high standards of predictability, accountability and partnership in all sectors or areas of activity. . . . [The cluster approach] should significantly improve the quality of international responses to major new emergencies.” *Id.* at 2.

⁶⁸ See IASC, *supra* note 67, at 3–5, 8–9; see also OCHA, *supra* note 66.

⁶⁹ See OCHA, *supra* note 66; see also Mercy Corps, *Commentary, Commentary on the Implementation and Effectiveness of the Cluster Approach* (Sept. 1, 2006), available at [http://www.reliefweb.int/rw/lib.nsf/db900SID/LTIO-6URRB5/\\$FILE/Mercy%20Corps-clusters-sep2006.pdf?OpenElement](http://www.reliefweb.int/rw/lib.nsf/db900SID/LTIO-6URRB5/$FILE/Mercy%20Corps-clusters-sep2006.pdf?OpenElement).

its effectiveness.⁷⁰ The system has been criticized as U.N.-dominated, where only U.N. agencies are appointed as cluster heads and NGO's, private relief agencies, national governments, civil society groups, and affected populations have no input in the process. Agencies prevented from having any role in the key decision-making process are less likely to cooperate with cluster heads that prefer to keep the agencies insulated and uninformed. Other complaints include the insufficient quality, skill, and experience of cluster head lead personnel, as well as an inflexible and unpredictable process within clusters. Another issue is that potential conflicts of interest often exist within a cluster lead agency. The competitive and resource-starved environments cause cluster heads to betray their role as impartial and independent. Within an agency, conflicts exist between the interest of the organization as a whole and the organization's role as a cluster head that truly jeopardize impartiality in decision-making and threatens legitimacy of the operation.⁷¹

Indeed, while the ICRC supports the United Nations in strengthening humanitarian response capabilities, it has refused to become part of the cluster system. Becoming a cluster lead or cluster member would force the ICRC to be formally accountable to a subsidiary body of the United Nations—the HC appointed to the given area. This accountability would severely threaten the ICRC's independence, impartiality, and neutrality.⁷² The ICRC would restrict its dealings with various parties to a conflict, and it would be forced to follow orders from an entity that has significantly less knowledge and experience in providing humanitarian aid. The ICRC maintains, however, that where clusters are put in place, coordination will still be a priority.⁷³

Although the ICRC rejects the idea of being a cluster lead, the ICRC does not dismiss the idea of being a lead agency over all humanitarian

⁷⁰ See Action Aid Int'l, *The Evolving U.N. Cluster Approach in the Aftermath of the Pakistan Earthquake: An NGO Perspective*, 3–5 (2006), available at www.actionaid.org/pakistan/images/ActionAid%20Report%20on%20UN%20Cluster%20Approach%20April%202006.pdf; see also Int'l Council of Voluntary Agencies, *Report by ICVA on the Roll-Out of the Cluster Approach in the Democratic Republic of the Congo (DRC)* (Mar. 18 2006), <http://www.icva.ch/doc00001846.html> [hereinafter ICVA]; see generally Mercy Corps, *supra* note 69, at 1 (discussing the effectiveness and general challenges of the cluster approach).

⁷¹ See Mercy Corps, *supra* note 69, at 2–6.

⁷² See e-mail from Simon Schorno, Spokesman/Head of Commc'n, Int'l Comm. of the Red Cross, to Sarah R. Denne, Assoc. Editor, CASE W. RES. J. INT'L L. (Mar. 9, 2007, 14:26 EST) (on file with author).

⁷³ See *id.* Where clusters are used, the leader of the ICRC delegation in a conflict area maintains contact with the HC, while the ICRC coordinators work with the relevant cluster leads. The ICRC has used this approach in Pakistan since October 2005 and maintains that it will use this approach in all cases where clusters are utilized. *Id.*

operations in the U.N. system.⁷⁴ As the ultimate lead agency with authority to make binding decisions in all sectors of a relief operation, the ICRC effectively eliminates the need for HCs and other U.N.-appointed authority. The ICRC need not be formally accountable to the United Nations under this proposed system because the ICRC has its own system of accountability built into its structure and ideology; the United Nations can trust the ICRC to make competent and knowledgeable decisions.⁷⁵

Using the ICRC as the U.N.-designated lead agency responsible for implementation and oversight of the humanitarian operations on the ground would remedy the problems evident during the period of sanctions against Iraq, such as lack of an authority hierarchy, as well as cure deficiencies apparent in the cluster approach like lack of impartiality, independence, and U.N. domination. With an identifiable organization like the ICRC having ultimate decision-making authority, full-scale humanitarian relief operations, agencies, and relief workers would operate within a functional management structure. Greater clarity in authority and the overall organizational structure would increase efficiency and ultimately increase the effectiveness of providing humanitarian goods to a vulnerable population.

1. About the ICRC: Ideology and Structure

“The ICRC is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of war and internal violence and to provide them with assistance.”⁷⁶ The ICRC’s distinctive ideology and structure make it especially capable to lead a large-scale humanitarian relief scheme. First, the ICRC’s ideology involves principles entirely devoted to preserving impartiality and neutrality—principles that the U.N. cluster system lacks. Second, the ICRC’s structure is intertwined with its ideology, producing a capable and solid management scheme that would enable the ICRC to adapt to the bureaucratic changes that the system presents.

The ICRC’s unique mandate charges the ICRC with the task of providing relief regardless of when or where a humanitarian crisis occurs. The mandate, grounded in international law, charges the ICRC with organizing the relief effort during armed conflicts and in situations of internal vi-

⁷⁴ *See id.*

⁷⁵ I would argue that the only necessary “duties” of the ICRC to the United Nations would be: (1) to report decisions, (2) give periodic field updates, and (3) notify the U.N. of concerns or problems in the field. For example, if the ICRC reports a problem of non-compliance by a U.N. agency, the U.N. would be better able to force compliance by using various methods of diplomatic punishment, such as cutting of funding.

⁷⁶ The ICRC’s Mission Statement (Feb. 8, 2007), available at <http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/68EE39?OpenDocument>.

olence.⁷⁷ The significance of having a legal mandate is that the ICRC is obligated to be present when there is a humanitarian crisis unlike most NGOs or other aid agencies, whose presence during a crisis is completely voluntary.⁷⁸

The ICRC's fundamental principles ensure that the agency will be regarded as impartial and neutral in any given relief operation, thus correcting the problem of the cluster approach. The ICRC is guided by seven "fundamental principles"—humanity, impartiality, neutrality, independence, voluntary service, unity, and universality.⁷⁹ Impartiality means that the ICRC will not discriminate "as to nationality, race, religious beliefs, class or political opinions."⁸⁰ In providing aid according to these principles, the ICRC will distribute its services based on need and "give priority to the most urgent cases of distress."⁸¹ The idea of neutrality, as embodied by the ICRC, has special meaning for carrying out aid operations in the field. As a neutral body, and in order to "enjoy the confidence of all," the ICRC refuses to take sides in hostilities regardless of the political, racial, religious, or ideological nature of the conflict. Neutrality and independence also facilitate the ICRC's ability to access persons in need. The implications are most notable in situations of armed conflict where the ICRC must treat belligerents in the same manner as all other parties involved. In theory and practice, those who require the most relief will receive it, regardless of which party to a conflict they are.⁸² This attitude of equal treatment is necessary to maintain legitimacy and trust among all parties.

Another facet of the ICRC's ideology is its commitment to cooperating with other relief agencies. Because there is no other formal mechanism for humanitarian coordination besides the recently developed clusters, the ICRC acquaints itself with other organizations, forges links, and exchanges information. The ICRC's policy of cooperating with other agencies in a conflict area will remedy the problem of non-integration evident in the U.N.-centric cluster approach. Communication and cooperation with other

⁷⁷ See The ICRC's Mandate and Mission, http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/section_mandate?OpenDocument (last visited Jan. 20, 2007).

⁷⁸ See The Feinstein Int'l Famine Center, *The Future of Humanitarian Action: Implications of Iraq and Other Recent Crises*, 2 (2003), available at http://hwproject.tufts.edu/pdf/iraq_issues_20031022.pdf.

⁷⁹ Int'l Comm. Of the Red Cross, *Statutes of the International Committee of the Red Cross*, 324 INT'L REV. RED CROSS 537–43 (Sept. 30, 1998), available at <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/57jjpgj?opendocument>.

⁸⁰ Denise Plattner, *ICRC Neutrality and Neutrality in Humanitarian Assistance*, 311 INT'L REV. RED CROSS 161, 168 (Apr. 30, 1996), available at <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/57jn2z?opendocument>.

⁸¹ *Id.*

⁸² See *id.* at 166.

agencies should not be construed as being counter to the principle of independence. Independence relates to parties to a conflict, the ICRC's commitment to cooperation reflects the ICRC's aim, on one hand, to meet all the needs of affected populations by avoiding duplication and/or gaps in services, and on the other hand, to maximize the impact of the overall response.⁸³ The ICRC goes to great lengths to determine the needs of those suffering; the ICRC recognizes that sharing information between all agencies involved is the only way to provide an adequate response. The ICRC conducts independent assessments while also taking into account the assessments made by other organizations. While the information concerning the planning of ICRC activities is systematically shared with other relevant humanitarian organizations, the ICRC seeks to be informed of other organizations' planning and considers such information. The goal of these efforts is to ensure that the needs of a population are covered comprehensively and that the roles played by the different organizations complement one another. The only information that the ICRC is unwilling to share with other agencies is information that may pose security risks to individuals.⁸⁴ In this way, the ICRC is well suited to have full decision-making authority in a field of operations.

Because the ICRC already has an intimate working relationship with relief agencies regularly involved in providing aid, the ICRC has the requisite knowledge of agencies in the field and of the underpinnings of a successful relief operation to make quick and competent decisions about how aid should be distributed in a given operation. With the ICRC as a lead agency, entities working under the ICRC will feel confident that the ICRC is taking into account its objectives and perspectives when making decisions, and as a result, a sense of trust will exist between all agencies involved. The ICRC can rest assured that its principles and authority will not be undermined by agencies in the field because agencies implementing decisions will have added valuable input in making those decisions. In practice, the ICRC regularly makes determinations on how tasks should be distributed based on the skills and capacities of each organization. Operational decisions are made with full knowledge of other organizations' benefits, while relying on them to keep in mind those of the ICRC. The ICRC maintains regular dialogue with other organizations active in the field to monitor the progress achieved and obstacles encountered. In particular, the ICRC focuses on fulfillment of the declared objectives of the various humanitarian

⁸³ See e-mail from Simon Schorno, *supra* note 72.

⁸⁴ See *id.* For example, information linked to detention activities is considered confidential and is shared only with the relevant authorities. However, issues regarding the protection of the civilian population are frequently shared with the mandated protection organizations (OHCHR, UNHCR, UNICEF). *Id.*

organizations, developments of the situation, and outstanding humanitarian needs.

Much like its ideology, the ICRC's structure is conducive to a role that gives it complete authority to make efficient and calculated decisions in humanitarian emergencies. This relative ease in decision-making is especially important when a crisis is at hand. The ICRC is comprised of a deliberative, cohesive, legislative body that is accustomed to making decisions that affect civilians in a humanitarian crisis. The ICRC also has, at present, an enormous presence in the field, with staff working around the world in conflict areas to further ICRC principles. With sound structures in place, the ICRC can easily transition from having control over its own affairs, to having authority to direct all entities involved in a humanitarian crisis.

The structure of the ICRC is as unique as its mandate. The ICRC is hybrid in nature, possessing qualities of a private association and an inter-governmental organization. The ICRC can most accurately be described as an intergovernmental organization that operates based on an international mandate.⁸⁵ In most ways, the ICRC functions like many other organizations, with legislative bodies and a president.⁸⁶ The Assembly is the main legislative body, and is responsible for developing strategy, approving the budget, and formulating policy. Some of the Assembly's responsibilities, including making decisions on matters of general policy, funding, personnel, and communication, are delegated to the Assembly Council. The Assembly Council reports to the Directorate—the executive body of the ICRC responsible for the implementation of strategy and policy and the overall efficiency of the Committee.⁸⁷ The President of the ICRC is responsible for diplomatic and external relations.⁸⁸ Both the Vice President and President participate in the Assembly as well.⁸⁹ One difference that sets the ICRC apart from other organizations is the fact that membership in these bodies is statutorily limited to fifteen to twenty-five members, all of whom must be Swiss citizens.⁹⁰ Interestingly, the ICRC has enjoyed much success and is able to maintain independence and neutrality due to its composition of only Swiss

⁸⁵ Gabor Rona, *The ICRC's Status: In a Class of its Own* (Feb. 17, 2004), available at <http://www.icrc.org/Web/Eng/siteeng0.nsf/html/5W9FJY>. Because of its classifications, the ICRC enjoys privileges that include “exemption from taxes and customs duties, inviolability of premises and documents, and immunity from judicial process.” *Id.*

⁸⁶ See Statutes of the ICRC, Art. 8 (May 5, 2003), <http://www.icrc.org/Web/Eng/siteeng0.nsf/html/icrc-statutes-080503> (last visited Jan. 12, 2007).

⁸⁷ See ICRC Decision-Making Structures, (Nov. 1, 2006), <http://www.icrc.org/Web/Eng/siteeng0.nsf/html/icrc-decision-making-structures-030706> (last visited Jan. 20, 2007).

⁸⁸ ICRC Presidency, (Jan. 1, 2006), <http://www.icrc.org/Web/Eng/siteeng0.nsf/html/icrc-presidency-article-010106> (last visited Jan. 20, 2007).

⁸⁹ ICRC Decision-Making Structures, *supra* note 87.

⁹⁰ Statutes of the ICRC, *supra* note 86, at Art. 7.

citizens. For example, the Committee has never failed to agree on any subject that has come before it for consideration.⁹¹

There is no need to alter the ICRC structure because the system as it exists produces informed and independent decisions and coordinates with other international agencies at both the national and global (headquarters) level. First, at the country level, the ICRC has a strong and capable workforce implementing the ICRC's mandate worldwide. Currently, the ICRC is present in more than eighty countries worldwide.⁹² Its 800 headquarters staff, 1,500 expatriates in the field, and 11,000 national staff are helping millions of persons affected by violence and other disasters. *Id.* The already strong presence of the ICRC in the field demonstrates the ICRC's structural capabilities required to undertake the task of being lead agency. In this way, the ICRC's staff will not be over-extended. If there is a need to increase the number of staff in the field, the newcomers will be easily integrated into a system that is functional and efficient.

Second, at the global headquarters level, ease in decision-making may be attributed to the fact that the ICRC is completely independent of any particular political party or country, and is not responsible to any identifiable constituency. The fact that no external agency or country (including Switzerland) influences the ICRC's decision-making process enables it to convincingly send the message of independence, one of its most valued principles.⁹³ Additionally, while the organization's independence fosters competent decisions at the headquarters level, the ICRC's exclusive structure does not leave it cut off from other agencies at the ICRC's highest levels of authority. In fact, the ICRC has always considered input from other agencies when making its decisions regarding institutional and operational humanitarian coordination.⁹⁴ Therefore, the ICRC need not alter its approach when appointed as lead agency. Many international agencies will already be used to working within the structure of the ICRC and providing input to work towards the common goal of improving the fate of persons affected by situations of violence and distress.

⁹¹ See Francois Bugnion, *The Composition of the International Committee of the Red Cross*, INT'L REV. RED CROSS 427-446 (Aug. 31, 1995), available at <http://www.icrc.org/web/eng/siteeng0.nsf.htmlall/57jmmc?opendocument>. The fact that the Committee is composed of Swiss citizens is significant. Switzerland is internationally regarded as "neutral," based on its tradition and the special status granted to it by certain treaties. Furthermore, the Swiss have not been involved in any wars for over two centuries. *Id.*

⁹² See e-mail from Simon Schorno, *supra* note 72.

⁹³ See *id.* Altering the ICRC's structure to include members of other nations, to create more of an international body, would destroy the idea of the ICRC's independence and would inevitably lead to outside political pressures from those affected by its decisions. Committee members would be under tremendous pressure to report the ICRC's activities to their respective governments, thus frustrating the decision-making process.

⁹⁴ See *id.*

2. International Acceptance and Status

The universal acceptance of the ICRC's legitimacy and expertise, coupled with the already prominent status of the ICRC, will allow for a smooth transition to its proposed elevated status in humanitarian crises. The ICRC's mandate, privileges, immunities, and observer status within the United Nations have been recognized by the international community and create a solid base of recognized authority and respect within the field.

That the ICRC already has a firm legal basis in international law makes granting it total control over humanitarian aid efforts within the U.N. system even more persuasive. The ICRC's mandate is grounded in two sources of international law: the Geneva Conventions and the ICRC Statutes. The Geneva Conventions charge the ICRC with organizing relief efforts in situations of conflict, while the ICRC Statutes provide for similar tasks in situations of internal violence and disaster.⁹⁵ The ICRC's principles and rights are legally-recognized in numerous countries by treaty or other legislation. Additionally, domestic and international judicial decisions have recognized the ICRC's judicial immunity and testimonial privileges in order to preserve the mandate and principles of the ICRC.⁹⁶ Because the ICRC is already so highly regarded around the globe, countries are accustomed to working with the ICRC and recognize the special mandate of the organization, thus allowing ease of administration and implementation.

Most important is that the ICRC has achieved special status at the United Nations as an "observer."⁹⁷ Observer status, granted in October 1990, gives the ICRC privileges that no other NGO or international agency has in the United Nations. As an observer, the ICRC has unfettered access to every meeting of a U.N. body or council. Previously, the ICRC only had "consultative status," which allowed access by invitation to the U.N. Economic and Social Council only.⁹⁸ Observer status gives the ICRC the opportunity to voice its opinion on relevant matters in meetings of the General Assembly and other committees, and grants access to U.N. documents that may otherwise be confidential.⁹⁹ The United Nations granted this status to the ICRC

⁹⁵ The ICRC's Mandate and Mission, *supra* note 77.

⁹⁶ Gabor Rona, *The ICRC Privilege Not to Testify: Confidentiality in Action*, 845 INT'L REV. RED CROSS (2002), available at <http://www.icrc.org/web/eng/siteeng0.nsf/html/5WS D9Q>. Courts recognizing ICRC privileges include the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Court. *Id.*

⁹⁷ See *The ICRC is Granted Observer Status at the United Nations*, 279 INT'L REV. RED CROSS 581 (1990), available at <http://www.icrc.org/web/eng/siteeng0.nsf/html/57JNWH>.

⁹⁸ Christian Koenig, *Observer Status for the ICRC at the United Nations: A Legal Viewpoint*, 280 INT'L REV. RED CROSS 37–48 (Feb. 28, 1991), available at <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/57jnwj?opendocument>.

⁹⁹ *The ICRC is Granted Observer Status at the United Nations*, 279 INT'L REV. RED CROSS 581–86 (Dec. 31, 1990), available at <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/>

because it recognized the ICRC's prominent and unique place in providing humanitarian assistance. The ICRC's views and policy serve as the model for other agencies, yet no other agency has been able to achieve the same status within the international community. Observer status demonstrates that the United Nations holds the ICRC in higher regard than other agencies—the United Nations desires that those playing a leading role on the international scene shape their policy to comport with the views and recommendations of the ICRC.¹⁰⁰

The observer status should serve as the model for U.N.-ICRC relations when the ICRC is appointed as lead agency of all U.N. humanitarian missions. The role is especially suited for allowing the ICRC to maintain its independence, and in many cases, confidential information. The ICRC has emphatically rejected that this special relationship calls into question its core principles of neutrality and confidentiality.¹⁰¹ First, the ICRC's status merely allows it to have a greater say in U.N. policy objectives and strategies in a given situation. Any stance taken by the ICRC will reflect its mandate to uphold and propagate international humanitarian law—the organization's only constituent. Moreover, the ICRC's Statutes prevent it from divulging information shared between the ICRC and a state where it carries out a humanitarian mission.¹⁰² This one-sided relationship with the United Nations is ideal for the ICRC's role as lead agency in U.N. humanitarian affairs.

Because the United Nations needs to reassert its legitimacy in the humanitarian arena, appointing the ICRC as lead agency will further that purpose. Nevertheless, the ICRC can only maintain its long-standing legitimacy if it remains independent and free from U.N. control. Although the United Nations will be required to forgo control over the ICRC and access to its confidential documents, the United Nations will re-affirm its effectiveness and legitimacy in humanitarian affairs. With this relationship, the United Nations will be able to trust the ICRC in making competent decisions, for the ICRC has accomplished what the United Nations has been unable to do: achieve universal respect and acceptance of its motives and policy.

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¹⁰⁰ See *id.*

¹⁰¹ Koenig, *supra* note 98. "[O]bserver status will in no way affect the ICRC's strict policy of neutrality and discretion." *Id.*

¹⁰² "[C]onfidenti[a] information concerning non-international armed conflicts or internal disturbances will never be divulged to third parties in or connected with the United Nations; such information is shared only with the State that has allowed the ICRC to carry out its humanitarian mission on its territory." *Id.*

B. *Security Risks and the ICRC's Seven Pillars*

Agencies devoted to providing humanitarian aid are facing problems that go far beyond mere coordination and organization. Today, agencies are confronted with increased security concerns and major policy quandaries.¹⁰³ There are a host of issues arising from the need to interact with forces whose intervention is seen as illegitimate by significant segments of public opinion. Additionally, the nature of combat has changed so dramatically that it is often difficult to distinguish between armed forces and gangs of armed bandits.¹⁰⁴ This has led to a significant increase in the number of targeted attacks on humanitarian aid workers. Recently, U.N. relief personnel in Darfur and Afghanistan have been attacked, while other relief agencies have suffered targeted attacks against their workers in areas like the Congo and Somalia.¹⁰⁵ Unfortunately, humanitarian agencies, both of the United Nations and non-U.N. variety, have been slow to respond to this insecurity and in many cases, have become increasingly risk-averse. Risk-aversion is extremely problematic for humanitarian agencies because it often contradicts the agency's mandate to provide relief in conflict areas.¹⁰⁶

The ICRC, however, has recognized increasing security risks and has taken affirmative action in developing its "Seven Pillars of Security" to conquer these ever-present challenges in the field. Creating a lead agency in the ICRC would do much to encourage other agencies working under the ICRC to alter or develop security policies analogous to those embraced by the ICRC.

The ICRC's Seven Pillars are based on the ICRC's fundamental principles of impartiality, neutrality, and independence. The Pillars are: (1) acceptance, (2) identification, (3) information, (4) security regulations drawn up by individual delegates, (5) personality, (6) telecommunications, and (7) passive and active protective measures.¹⁰⁷ Other humanitarian agen-

¹⁰³ The Feinstein Int'l Famine Center, *supra* note 78, at 1.

¹⁰⁴ See Phillipe Dind, *Security in ICRC Field Operations*, SECURE 02, June 2002, at 21, 22.

¹⁰⁵ See Alfred de Montesquiou, *Aid Groups Warn of Wider Darfur Crisis*, CBS NEWS, Jan. 17, 2007, available at <http://www.cbsnews.com/stories/2007/01/17/ap/world/mainD8MN9RIG5.shtml>; see also Michael Vincent, *U.N. Aid Workers Attacked in Afghanistan*, ABC NEWS, June 15, 2004, <http://www.abc.net.au/am/content/2004/s1131938.htm>; see also *DR Congo Aid Workers Under Attack*, BBC NEWS, Jan. 20, 2005, available at <http://news.bbc.co.uk/2/hi/africa/4192499.stm>; see also Missionary Int'l Serv. News Agency, *Attack Against Spanish Aid Workers in Somalia*, SPERO NEWS, Feb. 16, 2007, <http://www.speroforum.com/site/article.asp?id=8026&t=Attack+against+Spanish+aid+workers+in+Somalia>.

¹⁰⁶ Claude Brunderlein & Pierre Gassamann, *Managing Security Risks in Hazardous Missions: The Challenges of Securing United Nations Access to Vulnerable Groups*, 19 HARV. HUM. RTS. J. 63, 64 (2006).

¹⁰⁷ Dind, *supra* note 104, at 26–27, 30–35; See also E-mail from Simon Schorno, *supra* note 72.

cies incorporate the majority of the Pillars into their security policies in some form, although a few of the Pillars are exclusive to the ICRC.¹⁰⁸ The fact that other agencies may have similar versions of the Pillars in their own security policies shows that the Pillars have a sort of universal appeal and general workability. Agencies need not completely re-vamp their security policies, nor will they have to adopt a system that is foreign in order to follow the lead of the ICRC.

Several of the Seven Pillars are worth discussing to show how they counter security problems, like risk-aversion. In fact, the ICRC's general approach to security nearly entirely rejects a risk-averse approach to helping affected populations.¹⁰⁹ The Pillar of acceptance is achieved two ways: first, by communication and negotiation with all parties in power (including warlords and members of organized crime); and second, by educating ICRC employees of the local customs and traditions so that they are accepted within a given area. In this way, the ICRC can only achieve true acceptance by dealing with all parties in power, regardless of their political or ideological beliefs. Although dangerous, the ICRC gains legitimacy and therefore increased security by assuring ICRC acceptance of all.¹¹⁰ Similarly, in accordance with the Pillar of identification, the ICRC notifies all parties involved of the buildings and other locations where the ICRC is carrying out activities in a given area.¹¹¹

Conversely, if agencies are reluctant to update their security policies in accordance with ICRC principles, the ICRC as lead agency will have complete authority either to conduct an operation according to its security scheme, or to allow for some variance in security policies. Within the current ICRC policy, a system of discipline is in place for members of the ICRC who breach the security regulations drawn up by delegates in charge of operations within a specific country. A breach of a regulation by an ICRC field staff member may result in penalties, among them being permanent dismissal from the ICRC.¹¹² This system of punishment can be easily extended where the ICRC is granted complete control over operations. A

¹⁰⁸ Dind, *supra* note 104, at 26.

¹⁰⁹ *See id.* at 22, 35. The ICRC's general policy towards security involves two tenets: (1) For ICRC field staff, danger is not the exception, it is part of their daily work environment; and (2) Security is largely a political issue that can be achieved by establishing a network of contacts among all parties involved so as to convince them of the ICRC's neutrality, impartiality, and independence. Additionally, the Pillar of passive and active protective measures provides for risk-averse behavior only in "exceptional circumstances." These circumstances include where the ICRC emblem offers no protection and when staff is just as vulnerable as other foreigners in an area. In these limited circumstances, the ICRC may use physical barriers, alarm systems, and in the most extreme cases armed guards. *Id.* at 22, 35.

¹¹⁰ *See id.* at 27.

¹¹¹ *Id.* at 30.

¹¹² *Id.* at 32.

blatant breach by an agency of a policy deemed essential by the ICRC could result in dismissal from the operation. The threat and ultimate embarrassment of dismissal by the ICRC will deter agencies from breaching the essential security policies established by the ICRC in a given operation.

In a particular field of operations, the ICRC need not require all agencies to conform to all of its security principles, but there will certainly be some inflexible rules. For instance, as lead agency, the ICRC would be the only agency permitted to negotiate and contract with local government authorities, belligerents, and other powerful groups in an area. The breach of this policy by an agency could have serious repercussions for the safety of the entire operation and therefore, should be punishable by the ICRC.

The ICRC rose to the challenge of combating emerging security risks and has set a powerful and visible precedent to guide all agencies. Because the security principles are both effective and adaptive to a given situation, the ICRC will not only be a leader in organizational aspects of the operation, but also in security matters. New and increased security risks make it necessary for the humanitarian community to consider and respond to these issues. Risk-aversion by agencies cannot be universally tolerated because it defeats the aim of effectiveness of providing aid to those in need. The ICRC's already sound and workable security principles have allowed it to maintain its legitimacy and helped it provide aid. The same legitimacy can be imputed to the U.N. system if the ICRC is allowed to take charge in both organizational and security matters.

CONCLUSION

The United Nations has gradually become aware of the crippling economic effect of comprehensive sanctions on the civilian population of a target state, much to the credit of the Iraq experience described in this Note. After Iraq, the United Nations continued to use sanctions as a policy tool, but favored "smart" sanctions (also known as "targeted" sanctions) as opposed to the comprehensive sanctions used against Iraq. Smart sanctions are intended to lessen civilian suffering by targeting the specific government actors who the United Nations is attempting to coerce or control.¹¹³ Smart sanctions are generally preferred over comprehensive sanctions, but complex political situations and resistance and/or aggression by the target country may cause the Security Council to choose comprehensive sanctions over

¹¹³ See Koenraad Van Brabant, *Can Sanctions be Smarter? The Current Debate* 18 (1999) available at <http://www.odihpn.org/documents/sanconconf.pdf> (last visited Sept. 9, 2007) (reporting on a conference held in London December 16–17, 1998); see generally DANIEL W. DREZNER, *THE SANCTIONS PARADOX: ECONOMIC STATECRAFT AND INTERNATIONAL RELATIONS* (Steve Smith et al eds., 1999).

smart sanctions to increase effectiveness.¹¹⁴ Nevertheless, the use of so-called “smart sanctions” has yielded questionable success in U.N. implementation.¹¹⁵

Smart sanctions cannot completely alleviate all of the harmful consequences to a civilian population. One of the biggest problems with smart sanctions is that although they are functional at the outset, they become less effective as the sanction regime continues. In many cases, and for various reasons—mainly non-compliance by the targeted state—a sanctions regime must be extended far beyond its planned duration in order to be effective, thus creating unintended humanitarian consequences.¹¹⁶

Neither comprehensive nor smart sanctions can shield a civilian population from destructive humanitarian consequences. Each method of sanctioning has shortcomings and cannot deal, in and of itself, with the problem of unintended civilian harm. For now, it seems that U.N. sanctions regimes cannot eradicate the disastrous effects of sanctions on the civilian population of a target country.

Because the consequences of U.N. sanctions are unavoidable and unpredictable, and the U.N. sanctions management and authority structure

¹¹⁴ See Robin Geiss, *Humanitarian Safeguards in Economic Sanctions Regimes: A Call for Automatic Suspension Clauses, Periodic Monitoring, and Follow-up Assessment of Long-Term Effects*, 18 HARV. HUM. RTS. J. 167, 183–87 (2005). For example, comprehensive sanctions may be necessary against a country like Iran. “Thus far, Iran has not responded to threats of economic enforcement measures and appears ready to endure coercive measures to maintain its nuclear program.” *Id.* at 185. (emphasis added). “[T]he Security Council may be left with few alternatives other than to use a comprehensive sanctions regime.” *Id.* (emphasis added). To date, comprehensive sanctions have been imposed on Southern Rhodesia, Iraq, Yugoslavia, and Haiti. *Id.* at 185–86. For descriptions of U.N. sanctions in various countries see S.C. Res. 661, U.N. Doc. S/RES/661 (Aug. 6, 1990); S.C. Res. 713, U.N. Doc. S/RES/713 (Sept. 25, 1991); S.C. Res. 724, para. 2, U.N. Doc. S/RES/724 (Dec. 15 1991); S.C. Res. 727, U.N. Doc. S/RES/727 (Jan. 8, 1992); S.C. Res. 841, U.N. Doc. S/RES/841 (June 16, 1993); S.C. Res. 917, U.N. Doc. S/RES/917 (May 6, 1994).

¹¹⁵ See generally David B. Kopel et al., *Is Resisting Genocide A Human Right?*, 81 NOTRE DAME L. REV. 1275, 1276, 1280–1288 (2006) (examining the failures of targeted sanctions and other measures); see also Kimberly Ann Elliot, *Analyzing the Effect of Targeted Sanctions*, in SMART SANCTIONS: TARGETING ECONOMIC STATECRAFT 171, 179 (David Cortright & George A. Lopez eds., 2002) (“In general, the problem with trying to extend the targeted approach to financial flows is that the more targeted the sanctions are, the easier they will be to evade.”).

¹¹⁶ See Geiss, *supra* note 114, at 185–86. A good example of the failure of smart sanctions and exemptions is the U.N. sanctions imposed against Haiti in 1993. The first set of sanctions was limited to a targeted embargo on fuel and arms. The sanctions contained humanitarian relief clauses (exemptions) to allow for speedy approval of humanitarian items. However, an unforeseen consequence of the sanctions was an increased in transportation costs, resulting in a dramatic increase in the price of food. Additionally, the U.N. found smart sanctions inadequate to coerce the intended targets and was forced to adopt a comprehensive regime. See S.C. Res. 917, *supra* note 114; S.C. Res. 841, *supra* note 114; Geiss, *supra* note 114, at 185–86.

in the field is inadequate, the process must be altered to create a strong organizational presence in the field. Appointing the ICRC as the lead agency of field operations in the U.N. system during humanitarian crises can address the deficiencies of the current system, while increasing international respect for and acceptance of the U.N. humanitarian system.

