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# IS THE CONTINUED USE OF SANCTIONS AS IMPLEMENTED AGAINST IRAQ A VIOLATION OF INTERNATIONAL HUMAN RIGHTS?

PEGGY KOZAL\*

## I. INTRODUCTION

Since 1990, the fate of the Iraqi population has constantly been threatened by the most extensive sanctions in the history of the United Nations (UN). These sanctions were imposed on Iraq to influence its government to change its nuclear warfare policies and comply with UN inspections of its chemical, nuclear and biological weapons. The impact of the sanctions, however, has not coerced the Iraqi government to alter its policies, but has instead led to a humanitarian crisis among the innocent civilian population.<sup>1</sup> Saddam Hussein still remains in power and the Iraqi government suffers a small portion of what the economy and people do.<sup>2</sup>

The international community employs sanctions, *inter alia*, as a method of policing human rights policies in other countries.<sup>3</sup> But when the enforcement of the sanctions worsens the humanitarian situation or violates human rights, the efficacy of the method employed must be examined. After ten long years of working toward its goal, it does not appear that these sanctions are means capable of resulting in the ends they are designed to achieve. Assuming *arguendo* that the UN is successfully achieving its objectives, the UN's use of force still should

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\*J.D. Candidate, May 2001, University of Denver College of Law; B.A., 1998, University of Iowa. The author recognizes the changing nature of the issues discussed herein and notes that the material is current as of May 2000. The author would like to thank Professor Paula Rhodes for her insightful suggestions and guidance in the preparation of this Comment.

1. Political Risk Services, Iraq, *Economic Conditions*, Oct. 1, 1998 (asserting that sanctions have reduced Iraqi living standards to less than 50% of its prewar level).

2. Ali H. Shobokshi, *Economic sanctions suit Saddam and sons*, SAUDI GAZETTE, Nov. 6, 1995; See Maggie O'Kane, *Report Condemns Sanctions on Iraq: Elite Go Unscathed, Ordinary People Go Hungry*, THE GUARDIAN (London), May 18, 1996, at 15.

3. Christopher Wall, *Human Rights and Economic Sanctions: The New Imperialism*, 22 FORDHAM INT'L L.J. 577 (1998).

not violate the well-established principle of war "proportionality".<sup>4</sup> This doctrine represents the concern that attacks against military targets should not cause excessive civilian suffering.<sup>5</sup>

The employment of sanctions is often criticized as an ineffective method of bringing about the destabilization of political leaders.<sup>6</sup> The UN economic sanctions on Iraq meet standards asserted by several scholars as criteria for "successful" sanctions.<sup>7</sup> But after the imposition of more than twenty-five resolutions against Iraq, the UN still has not gained Iraq's compliance with several international norms.<sup>8</sup>

This paper examines whether the continued implementation of UN sanctions against Iraq are a violation of international human rights. The Security Council's accountability for its actions will be discussed in light of the Convention on the Rights of the Child and the UN Charter.<sup>9</sup>

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4. Andrew K. Fishman, *Between Iraq and a Hard Place: The Use of Economic Sanctions and Threats to International Peace and Security*, 13 EMORY INT'L L. REV. 687, 719 (1999).

5. *Id.*

6. In 1995, Secretary-General Boutros-Gali criticized sanctions as raising the ethical question of "whether suffering inflicted on vulnerable groups in the target country is a legitimate means of exerting pressure on the political leaders whose behavior is unlikely to be affected by the plight of their subjects." Erica Cosgrove, *The Sanctions Dilemma and the Case of Iraq: Human Rights and Humanitarian Challenges to the Use of Multilateral Economic Sanctions*, 9 WINSOR REV. OF LEGAL AND SOC. ISSUES 65, 93 (1999). See also Lt. Col. Susan S. Gibson, *International Economic Sanctions: The Importance of Government Structures*, 13 EMORY INT'L L. REV. 161, 181 (1999). See also L. Kirk Wilcott, *Ongoing at the Carter Center: Seeking Effective Sanctions*, 11 EMORY INT'L L. REV. 351 (1997) (discussing the imposition of economic sanctions against Cuba in the effort to drive Fidel Castro out of power). See also *Hearing of the Trade Subcommittee of the House Ways and Means Committee, Use and Effect of Unilateral Trade Sanctions*, FEDERAL NEWS SERVICE, Oct. 23, 1997 (debating the role of sanctions and considering effectiveness and consequences).

7. Gibson, *supra* note 6, at 164. Criteria included: the swift imposition of comprehensive sanctions after a violation of an international norm; a U.N. action (as opposed to unilateral or multilateral action); widespread cooperation in the participation of the sanctions; a target country that depends on an export which is easily monitored and controlled; and a regime that is enforced and given time to work. The genocide against the Kurdish people and Iraq's 1990 invasion of Kuwait signify the violations of international norms that worried the international community and led to imposition of the sanctions. Iraq's "Al-Anfal Campaign" in 1987 was aimed at depopulating Iraqi Kurdistan. Over 180,000 people were killed in the massive deportation and execution of men, women and children. The Campaign used chemical weapons to systematically destroy Kurdistan villages. Louis Rene Beres, *Prosecuting Iraqi Gulf War Crimes: Allied and Israeli Rights Under International Law* 41 n. 1.

8. Wilcott, *supra* note 6, at 358.

9. The U.N. Charter is addressed to member states. U.N. CHARTER art. 4. For purposes of this paper, the substance of various provisions in the Charter and other treaties will be addressed. The U.N. Charter does not explicitly say elsewhere that the U.N. itself is obligated to international human rights. However, it is implicit that the U.N. must be bound by the same standards and principles that it sets out for its Members, even though it is not a "state".

The Convention is addressed because the impact from the sanctions affects children the most detrimentally.

*A. The Security Council Resolutions as the Basis for Sanctions*

On August 6, 1990, following the Iraqi military invasion and illegal occupation of Kuwait, the Security Council imposed comprehensive sanctions on Iraq in Resolution 661.<sup>10</sup> This resolution took measures to secure Iraqi compliance with UN inspection of its chemical, biological and nuclear warfare.<sup>11</sup> Resolution 661 put a blanket ban on the importation of Iraqi products and the exportation of all products to Iraq, except those used strictly for medical or humanitarian purposes.<sup>12</sup> It prevented States from exchanging funds or other economic resources with Iraq, unless used for humanitarian purposes.<sup>13</sup>

The authoritative basis for economic sanctions is in Chapter VII of the Charter.<sup>14</sup> The Security Council has the authority to determine the existence of any threat to peace.<sup>15</sup> It “may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and . . . call upon the Members of the United Nations to apply such measures.”<sup>16</sup> The UN may be attracted to the use of sanctions on Iraq since sanctions fall short of the use of military force, but still send a strong message of disapproval.<sup>17</sup>

Even though the Resolution exempted from the sanctions foodstuffs and supplies for essential civilian needs, the list of non-essential humanitarian articles is extensive.<sup>18</sup> Textbooks, spare parts for ambulances, nails, a variety of textiles, light bulbs and other commodities that were once readily available, are now unavailable to Iraqi persons.<sup>19</sup> “Dual use” materials that provide a risk to the development of warfare are also prohibited. Chlorine for drinking water is one such item that has greatly contributed to Iraq’s humanitarian catastrophe.<sup>20</sup>

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10. S.C. Res. 661, U.N. SCOR, 2933<sup>rd</sup> mtg., U.N. Doc. S/RES/661 (1990).

11. *Id.*

12. *Id.*

13. *Id.*

14. U.N. CHARTER art. 39.

15. *Id.*

16. *Id.* art. 41.

17. Gibson, *supra* note 6, at 162.

18. See Violette Daguerre, *End the Blockade against the People of Iraq, Two Texts about Sanctions, Let the Children Live*, Arab Commission of Human Rights (Feb. 24, 1998) <<http://home.swipnet.se/~w-79939/Iraq.htm>>.

19. *Id.*

20. Abdullah Mutawi, *Iraq and the Corruption of Human Rights Discourse*, MIDDLE EAST INTERNATIONAL, Feb. 11, 2000.

In January 1991, a U.S. led coalition launched an air war against Iraq.<sup>21</sup> Three months later, Iraq accepted the terms of UN cease-fire Resolution 687, which sets the conditions for lifting the sanctions.<sup>22</sup> It provides that Iraq must define its borders with Kuwait and affirm its liability for Persian Gulf War reparations.<sup>23</sup> Another requirement is that Iraq must destroy or render harmless, under international supervision, its capacity to employ weapons of mass destruction.<sup>24</sup> The Resolution established the UN Special Commission (UNSCOM) as a subsidiary organ of the Security Council that was responsible for on-site inspection and destruction of Iraq's biological, chemical and missile capabilities at designated locations.<sup>25</sup>

Sources are contradictory as to whether Iraq has showed sufficient compliance with the UN's disarmament requirements. According to, former UNSCOM Chief Inspector W. Scott Ritter, Iraq has been disarmed from a qualitative standpoint and does not possess militarily viable biological or chemical weapons on a meaningful scale, nor can it produce or deploy ballistic missiles, chemical or biological weapons.<sup>26</sup> Iraq may not even be a major threat to international security because it fears a nuclear threat from the U.S.<sup>27</sup>

However, Iraq has repeatedly denied access to some facilities, leading UNSCOM to believe that it has substantial biological and chemical weapons capabilities.<sup>28</sup> Many argue that the sanctions interfere with Iraq's national sovereignty and that United States officials unfairly dominate them in order to retain access to oil at a low price.<sup>29</sup> Whatever trust there was in the neutrality of UNSCOM was severed when after years of accusations that the U.S. used spies in UNSCOM, Iraq found that UNSCOM had closely cooperated with the

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21. Associated Press, *Iraq Crisis Chronology* (Jan. 15, 2000) <<http://wire.ap.org/APnews/center>>.

22. S.C. Res. 687, U.N. SCOR, 2981<sup>st</sup> mtg., S/RES/687 (1991).

23. *Id.*

24. *Id.*

25. *Id.*

26. Anthony Arrove, *Voices in the Wilderness: A Campaign to End the Economic Sanctions Against the People of Iraq, Myths and Realities Regarding Iraq and Sanctions*, South End Press (visited Apr. 8, 2000) <<http://www.nonviolence.org/vitw/mythsaand%20realities3.html>>.

27. See Ali H. Shobokshi, *Sanctions Cannot Go Unless Iraq Shuns Militarism*, SAUDI GAZETTE (Oct. 16, 1995) (reporting that Baghdad had biological weapons ready in 1990 to use against Kuwait, but did not use them because of a perceived threat from the U.S.).

28. See Edith M. Lederer, *Iraq Said Hiding Biological Weapons*, Feb. 9, 2000, available in 2000 WL 12389648 (suggesting that Iraq has kept secret biological warfare from weapons inspectors); See also Waiel Faleh, *Iraq Nixes U.N. Inspections Bid*, Feb. 10, 2000, available in 2000 WL 12390202 (citing instances where Iraq announced that it would let U.N. inspectors in the country).

29. *The Right of Peoples to Self-Determination and its Application to Peoples Under Colonial or Alien Domination or Foreign Occupation*, U.N. Commission on Human Rights, 55<sup>th</sup> Sess., Agenda Item 5, at 2, U.N. Doc. E/CN.4/1999/NGO/32, (1999).

U.S. intelligence operatives in Iraq.<sup>30</sup> France, Russia and other states promoted the modification, replacement or elimination of UNSCOM, partly due to these revelations.

In December 1999, the Security Council established the U.N. Monitoring, Verification and Inspection Commission (UNMOVIC) as a replacement for UNSCOM.<sup>31</sup> UNMOVIC is a reinforced system of monitoring and verification, which will address outstanding disarmament issues and identify additional sites suspected of harboring chemical and biological weapons.<sup>32</sup> The resolution orders that Iraq "shall allow UNMOVIC teams immediate, unconditional and unrestricted access to any and all areas, facilities, equipment, records and means of transport which they wish to inspect" and to interview any official or other persons under the authority of the Iraqi government.<sup>33</sup> The resolution permits States to import any volume of petroleum or petroleum products of Iraqi origin, and to engage in any financial or other essential transactions directly related thereto.<sup>34</sup> It requests that the Secretary-General establish a group of experts to examine alternatives for increasing Iraq's petroleum production and export capacity and to explore the options for the involvement or investment of foreign oil companies in Iraq's oil sector, subject to appropriate monitoring.<sup>35</sup>

#### *B. Iraqi compliance and dwindling support*

Iraqi history of resistance in complying with UN inspectors has led them to believe that Iraq still has strong capabilities for biological and chemical warfare. For example, when UNSCOM and Iraqi officials set a schedule in June 1998 to conclude issues regarding biological and chemical warfare, Iraq did not provide the necessary documents.<sup>36</sup> Two months later Iraq declared that it was suspending cooperation with UNSCOM on disarmament activities and putting restrictions on spot inspections.<sup>37</sup>

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30. See Louis Meixler, *UNSCOM Proves to Be Aggressive*, ASSOCIATED PRESS, Nov. 18, 1998. U.S. intelligence is not alone in its spy operations. According to a former high-ranking official in Iraq's secret nuclear weapons program, Iraqi students used American libraries for bomb-making information and Iraqi agents and scientists gathered valuable data at American scientific conferences. Barbara Crossette, *Expert Says Iraq Got Bomb Data From U.S.*, N.Y. TIMES, Mar. 23, 2000.

31. S.C. Res. 1284, U.N. SCOR, 4084<sup>th</sup> mtg., U.N. Doc. S/RES/1284 (1999).

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. Sean D. Murphy, *Contemporary Practice of the United States Relating to International Law*, 93 A.J.I.L. 470, 472 (1999).

37. *Id.* at 473.

Iraq halted all compliance with UNSCOM on October 31, 1998.<sup>38</sup> The U.S. announced its authority to use force, and but then aborted a missile attack when Iraq sent several firm commitments accepting compliance of UNSCOM.<sup>39</sup> Provoked by continuous rescission of Iraqi compliance, on December 16, 1998, the U.S. and the U.K. began a seventy-hour missile and aircraft bombing attack against a hundred different military and intelligence sites in Iraq.<sup>40</sup> China, France and Russia criticized the UN operations, calling for an end to the oil embargo on Iraq.<sup>41</sup> Russia declared the attack as an unprovoked act of force that violated principles of international law and the UN Charter.<sup>42</sup>

Evidence of increasing opposition to the sanctions on Iraq and the divide within the Security Council over the UN's policies towards Iraq is illustrated by the resignation of several officials who have closely monitored the sanctions. After only 15 months as the UN humanitarian coordinator in Baghdad and overseer of the Oil-For-Food Program, Hans von Sponeck stepped down from the job in February 2000.<sup>43</sup> The United States and Britain had pressed for the dismissal of von Sponeck due to frustration with his public statements about the debilitating effects of the UN sanctions on Iraq.<sup>44</sup> He argues that disarmament issues should be considered separately from sanctions relief.<sup>45</sup>

Similar pressures led his predecessor, Denis Halliday, to resign from the job in October 1998.<sup>46</sup> Halliday quit the UN in protest of the humanitarian consequences of the embargo and now lobbies for lifting the sanctions on Iraq.<sup>47</sup> Halliday's position is that not only was the Gulf War itself a violation of the Geneva Convention, but also that the UN sanctions violate sovereignty values and international human rights law enshrined in the UN Charter.<sup>48</sup> He argues that the sanctions are genocide<sup>49</sup> and that the UN should lift all non-military sanctions, but

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38. *Id.*

39. *Id.* at 474.

40. *Id.*

41. *Id.* at 477.

42. *Id.*

43. Phyllis Bennis, *Will the Last Humanitarian Coordinator in Iraq Please Turn Out the Lights?*, THIRD WORLD RESURGENCE, Feb. 18, 2000.

44. Roula Khalaf, *Britain Urge U.N. Official in Iraq to Quit*, FINANCIAL TIMES, Nov. 2, 1999, at 1.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. Carol Christian, *Sanctions Against Iraq Killing Thousands, Ex-U.N. Official Says*, HOUSTON CHRONICLE, Feb. 24, 1999, at 25 A. Given that the definition of genocide includes an act such as "killing or causing serious bodily or mental harm with the intent to destroy . . . a national, ethnic, racial or religious group," the sanctions against Iraq may constitute genocide. Mutawi, *supra* note 20. The U.N. has targeted Iraq as a "national

still maintain the ban on arms sales for Iraq and all Middle Eastern countries.<sup>50</sup>

The day after von Sponeck resigned, Jutta Burghart, chief of the UN's World Food Programme in Iraq, also quit in protest of the economic sanctions and the failure of the UN's humanitarian programs in Iraq to protect Iraqi civilians from the negative effects of the sanctions.<sup>51</sup> She reported that 70% of household income is spent on food, which, by UN and world standards, is considered an indicator of imminent famine.<sup>52</sup> Burghardt also criticized the Iraqi regime for only dealing with the food shortage on an emergency basis.<sup>53</sup>

## II. HUMANITARIAN CRISIS AND MITIGATING EFFORTS

Efforts to rebuild its economy and pay its debts may have been attempted,<sup>54</sup> but the destruction of Iraq's civilian infrastructure during the Gulf War, the Iran-Iraq War and the subsequent imposition of the sanctions have led to a dramatic increase in hunger, disease and death. The more vulnerable populations, such as women, children, and the disabled have been hit hardest.<sup>55</sup>

According to a 1998 UNICEF report, an increase in infant mortality rates for children under the age of five reached an excess of some 40,000 infant deaths annually compared to the rate in 1989.<sup>56</sup> The high rate of infant deaths is primarily attributed to diarrhea, pneumonia and malnutrition, and is associated with increased illness unattended by

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group" and its policy has led to hundreds of thousands of deaths and severe bodily and mental harm. *Id.* Even if there was no intent when the sanctions were first implemented, it can be claimed to have formed. *Id.*

50. Denis Halliday, *End the Public-Health Catastrophe of Sanctions against Iraq*, AUSTIN AMERICAN STATESMAN, Feb. 24, 1999, at A15.

51. Carola Hoyos, *U.N. Food Chief for Iraq Resigns*, FINANCIAL TIMES, Feb. 16, 2000, at 12.

52. Bennis, *supra* note 43.

53. *Id.*

54. In 1990, Iraq announced its intention to repay approximately US\$3 billion dollars that it owed in debt. WORLD CURRENCY YEARBOOK, *IRAQI DINAR* (1996). Iraq's debt accumulated quickly under the sanctions. In three months the price of oil fell \$6 per barrel. Every reduction of \$1 per barrel created a \$1 million loss in revenue for Baghdad. *Id.* War reparations to Iran are estimated at \$90 billion; reparations resulting from the Kuwaiti invasion could amount to over \$100 billion. Repairs to Iraq infrastructure may cost as much as \$200 billion. *Economic Conditions, supra* note 1.

55. See *Identical Letters Dated 20 March 1991 From the Permanent Representative of Iraq to the United Nations Addressed Respectively to the Secretary-General and the President*, U.N. SCOR, S/22366, U.N. Doc S/22364 (1991) (describing conditions in post-war Iraq).

56. UNICEF REPORT, SITUATION ANALYSIS OF CHILDREN AND WOMEN IN IRAQ 42-44, (Apr. 30, 1998), available at [http://www.childinfo.org/Other/Iraq\\_sa.pdf](http://www.childinfo.org/Other/Iraq_sa.pdf) [hereinafter UNICEF Report].

adequate health care, deteriorating living standards and compromised water and sanitation.<sup>57</sup> Prior to implementation of the UN sanctions, malnutrition was not a public health problem and severe clinical malnutrition was rarely seen.<sup>58</sup> Now, hundreds of thousands of children are deprived of their basic sustenance needs.<sup>59</sup>

Many Iraqi children of those who fought in the Gulf War suffer from severe deformities as a result of the hundreds of thousands of depleted uranium shells that were fired on the soldiers.<sup>60</sup> The embargo effectively prevents Iraqi efforts to remedy this severe situation. For example, the Iraqi Social Welfare Act was created to govern disabled rights.<sup>61</sup> It gave the disabled the right to benefit from state-financed services.<sup>62</sup> Iraqi officials claim that the Act's effectiveness has been jeopardized by the sanctions due to lack of resources, but that the authorities still hoped to open new training and rehabilitation centers.<sup>63</sup>

The international community has extensively discussed measures that would ameliorate the consequences of the original UN actions, but a lot of talk and little-to-no play has kept some of the same humanitarian problems left to reoccur. In April 1995, the Security Council enacted Resolution 986 as a temporary measure to provide for Iraqi needs.<sup>64</sup> This "Oil-for-Food" program authorized States to permit a limited import of Iraqi petroleum products and financial transactions related thereto.<sup>65</sup> The United Nations agreed to permit Iraq to sell US\$1 billion of oil over a 90-day period in order to purchase humanitarian supplies.<sup>66</sup> Yet, Iraq is in a constant state of need for humanitarian aid.<sup>67</sup>

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57. *Id.*

58. *Id.* at 58.

59. *Id.*

60. *Iraq: Blames West for Children's Deformities* (July 30, 1999) <[www.UNfoundation.org/unwire/unwire.cfm#16?ID=48127](http://www.UNfoundation.org/unwire/unwire.cfm#16?ID=48127)>. Depleted uranium is a waste product of the nuclear industry and has caused deformities in babies such as tiny heads, no feet, huge clefts in their backs, distorted limbs and torsos.

61. U.N. Committee on the Rights of the Child, 19<sup>th</sup> Sess., 484<sup>th</sup> mtg. U.N. Doc. CRC/C/SR.484 (1998).

62. *Id.*

63. *Id.*

64. S.C. Res. 986, U.N. SCOR, 3519<sup>th</sup> mtg., U.N. Doc. S/RES/986 (1995).

65. *Id.*

66. *Id.* Proceeds from the sale of crude oil are deposited into an escrow account managed by the U.N. Of the revenues generated, 53% is allocated for food, medicine and humanitarian supplies in the Central and Southern regions, 13% for food, medicine and humanitarian supplies in the North, 30% for the Persian Gulf War reparations, approximately 3% for the U.N.'s administrative costs. Less than \$1.6 billion remains for the 18 million Iraqi population, factoring to about \$7.50 per person per month. The 90-day period is renewable.

67. UNICEF Report, *supra* note 56. The Oil-for-Food plan has failed to provide adequate protection for Iraqi children, resulting in widespread suffering and malnutrition. Halliday stated that there was no evidence of the Program's funds or

In May 1998, an aircraft coordinated by the Bahrain Red Crescent Society left Bahrain for Iraq to bring 40 tons of medicinal equipment and goods.<sup>68</sup> This was the eleventh time the society sent its aid to Iraq to curb the effect that the UN sanctions have had on Iraq since 1990.<sup>69</sup> Due to extreme inflation and plunging wages, it is almost impossible for civilians to buy food in the open market.<sup>70</sup> Instead, they must rely on limited food rations provided by the government at subsidized prices.<sup>71</sup>

Resolution 986 is often criticized for its insufficiency. It encourages increased oil production as oil prices fall.<sup>72</sup> Over-pumping without sufficient well pressure maintenance destroys a significant number of Iraq's oil fields and has other adverse effects on the environment.<sup>73</sup> Without concurrent expenditure on chemicals for drilling mud and other spare parts and equipment, oil-containing rocks and pipelines continue to worsen.<sup>74</sup> In order to reverse the downward trend in oil production conditions, the Security Council needs to expedite the process of approving applications for spare parts and equipment.<sup>75</sup>

### III. INTERNATIONAL HUMAN RIGHTS AND SECURITY COUNCIL ACCOUNTABILITY:

#### A. *If the Security Council is violating international law, in what forum can the problem be addressed?*

The Security Council has not devoted a commission to monitor the human rights impacts of the sanctions, and is consequently criticized for the failure to recognize its legal obligations to the Iraqi population.<sup>76</sup> However, international human rights law demands that every nation

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supplies being diverted by Iraqi ruling officials, suggesting that the funds are insufficient to satisfy Iraqi hunger needs. Denis Halliday, *Interview*, DALLAS MORNING NEWS, Mar. 21, 1999.

68. *Mercy Aid Flight Bound for Iraq*, GULF DAILY NEWS, Middle East Newsfile, May 18, 1998.

69. *Id.*

70. *Economic Conditions*, *supra* note 1. During the period of 1990-1998, Iraqi unemployment has not fallen below 17.5%. *Id.*

71. *Id.*

72. Jane's Sentinel, *The Gulf States*, Iraq, 31 (1997).

73. *Letter About the State of Iraq's Oil Reserves from Kofi Anan to the President of the Security Council* (July 2, 1999) <[www.U.N.org/Depts/oip/reports/sgoil6.html](http://www.U.N.org/Depts/oip/reports/sgoil6.html)>.

74. *Id.* Some of these needed supplies are included in the embargo under Resolution 661.

75. *Id.*

76. Center for Economic and Social Rights, UNSANCTIONED SUFFERING: A HUMAN RIGHTS ASSESSMENT OF UNITED NATIONS SANCTIONS ON IRAQ 35 (May 1996) available at <http://www.cesr.org/text%20files/sanct.PDF>. The Security Council has instead occasionally taken note of reports by other U.N. bodies and independent research groups.

respect its citizens' human rights, and other nations have the right and responsibility to ensure this obligation is lived up to.<sup>77</sup>

There is a strong claim that the UN's comprehensive sanctions are contradictory to the UN Charter and violate its own human rights standards. Article 1 of the Charter states that in order to maintain international peace and security, the UN may "take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace."<sup>78</sup> Although this is the basis for the sanctions, in the same article, the Charter declares that a purpose of the UN is to "achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all."<sup>79</sup> Read with article 24 of the UN Charter, the Security Council must act in accordance with this purpose while using its authority to maintain the peace and security.<sup>80</sup> Moreover, the UN shall promote "higher standards of living, full employment, and conditions of economic and social progress and development...[and] universal respect for, and observance of, human rights and fundamental freedoms for all."<sup>81</sup> These provisions lead to the conclusion that since the Security Council must comply with the purposes of the UN when using its authority to impose sanctions, it must uphold human rights standards.<sup>82</sup>

The UN Charter grants the delegation of powers to the General Assembly and the Security Council.<sup>83</sup> Chapter V of the UN Charter

77. Bilder, *An Overview of International Human Rights Law: Guide to International Human Right Practices* 3-17 (1983), reprinted in BARRY E. CARTER AND PHILLIP R. TRIMBLE, *INTERNATIONAL LAW* (1995).

78. U.N. CHARTER art. 1, para. 1.

79. *Id.* para. 3.

80. U.N. CHARTER art. 24. Article 24 gives "the Security Council primary responsibility for the maintenance of international peace and security," but also states that "[i]n discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations."

81. U.N. CHARTER art. 55.

82. A similar illustration of this analysis is found in U.N. G.A. Res. 44/215, U.N. GAOR, 44<sup>th</sup> Sess., Agenda Item 82(b), U.N. Doc. A/RES/44/215 (1989). This General Assembly meeting, entitled *Economic Measures as a Means of Political and Economic Coercion against Developing Countries*, "Calls upon the developed countries to refrain from exercising political coercion through the application of economic instruments with the purpose of inducing changes in the economic or social systems, as well as in the domestic or foreign policies, of other countries; Reaffirms that developed countries should refrain from threatening or applying trade and financial restrictions, blockades, embargoes, and other economic sanctions, incompatible with the provisions of the Charter of the United Nations and in violation of undertakings contracted multilaterally and bilaterally, against developing countries as a form of political and economic coercion that affects their political, economic, and social development."

83. U.N. CHARTER art. 7.

defines and therefore implicitly limits the Security Council's powers.<sup>84</sup> However, the UN Charter does not give express authority to any other international independent judiciary or political organ to review the Security Council's decisions.<sup>85</sup>

It may be that the International Court of Justice (ICJ), as the UN's "principle judicial organ",<sup>86</sup> should have the power to determine whether the Security Council has acted *ultra vires* (beyond the scope of its powers).<sup>87</sup> But even if the ICJ declared the UN sanctions against Iraq as illegal, the declaration is unenforceable. The function of the court is twofold: to settle legal disputes submitted to it by states and to issue advisory opinions on legal issues submitted to it by authorized organs and agencies.<sup>88</sup> Since the Iraqi situation is not a matter to be adjudicated between states, the Court would only have jurisdiction to give advisory opinions, not binding judgments, based on requests by certain intergovernmental organizations.<sup>89</sup> Only five organs of the UN, and 16 specialized agencies of the UN, may request advisory opinions.<sup>90</sup>

Article 94, paragraph 1 of the UN Charter, states that all members of the UN must comply with decisions of the ICJ.<sup>91</sup> If any party fails to perform its obligations rendered by the ICJ's judgment, under the UN Charter, the Security Council has the power to enforce judgments.<sup>92</sup> Therefore, the Security Council would be obliged to enforce a judgment against itself.<sup>93</sup> The credibility of the UN as a whole would be at stake if

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84. Thomas M. Franck, *The "Powers of Appreciation": Who Is the Ultimate Guardian of U.N. Legality?*, 86 AM. J. INT'L L. 519, 520 (1992). See also U.N. CHARTER arts. 23-32 (defining the Security Council and its powers).

85. J. Alexander Thier, *Between Iraq and a Hard Place: The Paradoxes of U.S. Iraq Policy*, 23 FLETCHER F. WORLD AFF. 193, 197 (Fall 1999).

86. Article 92 of the Charter authorizes the ICJ as the "principal judicial organ of the United Nations." U.N. CHARTER art. 92.

87. Franck, *supra* note 84, at 520. An example of the validity of S.C. sanctions being tested occurred in 1992, when Libya requested that the ICJ conclude that Security Council Resolution 748 was contrary to international law. *Id.* at 521. Resolution 748 imposed Universal mandatory commercial and diplomatic sanctions to persuade the Libyan Government to surrender its two nationals accused of the Lockerbie bombing to stand trial in the U.S. or U.K. *Id.*

88. *International Court of Justice, General Information-The Court at a Glance* (<<http://www.icj-cij.org/icjwww/igeneralinformation/icjgnnot.html>> (visited Mar. 3, 2000)).

89. *Id.* As an alternative action, the Security Council could create a tribunal for Iraq concerning its human rights violations, and bring before it Saddam Hussein and other Iraqi officials who are responsible for crimes against humanity and other violations of international law. Lieutenant Commander Catherine S. Knowles, *Life and Human Dignity, the Birthright of all Human Beings: An Analysis of the Iraqi Genocide of the Kurds and Effective Enforcement of Human Rights*, 45 NAVAL L. REV. 152, 208 (1998).

90. *Id.*

91. U.N. CHARTER art. 94.

92. *Id.* arts. 41-42.

93. See Joy K. Fausey, *Does the United Nations' Use of Collective Sanctions to Protect*

the Security Council were faced with enforcing an ICJ ruling on the validity of the UN sanctions against Iraq.<sup>94</sup>

### B. Customary Law

Human rights laws apply universally by the adoption, ratification and accession of treaties and conventions.<sup>95</sup> Universally accepted norms to which states believe they are bound and from which no derogation is permitted, or *jus cogens*, also obligates states to human rights laws.<sup>96</sup> Some scholars argue that *jus belli* (the law of war) applies to the use of economic sanctions since they resemble war strategies.<sup>97</sup> The International Institute of Humanitarian Law (IIHL) asserts that *jus belli* applies whether an economic embargo occurs during peacetime or in armed conflict.<sup>98</sup> The Geneva Conventions of 1949 and their two Protocols of 1977<sup>99</sup> are applicable examples of multilateral treaties that codify customary rules and standards on subjects such as bans on particular weapons and cultural property.<sup>100</sup>

Such customs and treaties are known as the "international humanitarian law of war," and stand for the idea that the calamities of war should be alleviated as much as possible.<sup>101</sup> In the humanitarian law of war doctrine, proportionality is a means of avoiding unnecessary suffering<sup>102</sup> and limiting coercive action in relation to achieving certain goals.<sup>103</sup> Proportionality and international humanitarian norms are two factors the Security Council must account for when imposing sanctions.<sup>104</sup> The UN sanctions have resulted in the collapse of the Iraqi economy and the deaths of hundreds of thousands of civilians, and have become disproportionate measures for gaining compliance with the cease-fire resolution.<sup>105</sup> The question that must be addressed is whether

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*Human Rights Violate Its Own Human Rights Standards?*, 10 CONN. J. INT'L L. 193, 208 (1994). In order to avoid embarrassment, the Security Council would likely comply with the Charter before the Court disagreed with it. *Id.* at 207.

94. *Id.*

95. Knowles, *supra* note 89, at 169.

96. *Id.*

97. Cosgrove, *supra* note 6, at 71.

98. *Id.*

99. Diplomatic Conference on Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflict: Protocols I and II to the Geneva Conventions, *opened for signature* Dec. 12, 1977, *reprinted in* 16 I.L.M. 1391 (1977) [hereinafter Geneva Protocols].

100. HENRY J. STEINER & PHILIP ALSTON, *INT'L HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS* 69 (Oxford University Press) (1996).

101. *Id.* at 70.

102. *Id.*

103. Cosgrove, *supra* note 6, at 61.

104. Fausey, *supra* note 93, at 211.

105. *But see* Majid Khadduri, *Perspectives on the Gulf War*, 15 MICH. J. INT'L L. 847 (1994) (reviewing a book that suggests that Iraq has committed damage proportional to

the human rights concerns caused by the Iraqi government were so severe that they justify depriving human rights to those who were not responsible for the sanctions.<sup>106</sup>

Article 54 Protocol 1 Additional to the Geneva Convention prohibits "starvation of civilians as a method of warfare."<sup>107</sup> Since measures short of armed conflict, such as economic sanctions, may also be bound to this prohibition, the UN could be increasingly held responsible for contributing to premature death, hunger and widespread humanitarian suffering.<sup>108</sup>

Although the Universal Declaration of Human Rights (Universal Declaration) is non-binding, it is "a common standard of achievement for all peoples and all nations, is the source of inspiration and has been the basis for the United Nations in making advances contained in existing international human rights instruments."<sup>109</sup> The Universal Declaration was incorporated into two binding treaties: the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>110</sup> and the International Covenant on Civil and Political Rights (ICCPR).<sup>111</sup>

In the ICESCR, States must recognize that "the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights."<sup>112</sup> After a decade of sanctions, millions of Iraqis have not been able to enjoy the rights to which they are entitled. The UN's Department of Humanitarian Affairs estimated about 4 million Iraqis live in extreme poverty.<sup>113</sup> The purchasing power of the Iraqi Dinar (ID) reduced from US\$3 = 1 Iraqi Dinar in 1990 to about US\$1 = ID 1,500 in 1997.<sup>114</sup> The GDP per capita has decreased from \$3500 to \$600; public workers average salaries are about \$3 to \$5 per month, compared to \$50-100

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the U.N. economic sanctions and military operations in Iraq).

106. Fausey, *supra* note 93, at 212.

107. Protocol I and II Additional to the Geneva Conventions of Aug. 12, 1949, and relating to the Protection of Victims of International Armed Conflicts, adopted June 8, 1977, entered into force Dec. 7 1978, U.N. Doc. A/32/144 Annexes I & II, 1125 U.N.T.S. no. 17512-13.

108. Cosgrove, *supra* note 6, at 73.

109. Knowles, *supra* note 89, at 171 (listing a number of provisions relevant to the human rights violations in the Iraqi situation).

110. International Covenant on Economic, Social and Cultural Rights, *adopted* Dec. 16, 1966, *entered into force* Mar. 23, 1976, *reprinted in* 999 U.N.T.S. 3 [hereinafter ICESCR].

111. International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966, *entered into force* Mar. 23, 1976, *reprinted in* 999 U.N.T.S. 171 [hereinafter ICCPR].

112. ICESCR pmb1.

113. UNICEF Report, *supra* note 56, at 9.

114. *Id.*

prior to 1990.<sup>115</sup>

In the ICCPR, article 6 states that law of the inherent right to life protects every human being.<sup>116</sup> The severity of the sanctions seems to negate that inherent right. UNICEF approximates that there has been an increase of 90,000 deaths annually due to the sanctions (over 250 people die daily).<sup>117</sup>

### *C. The United Nations Convention on the Rights of the Child*<sup>118</sup>

The UN Convention on the Rights of the Child is the most widely and rapidly ratified treaty.<sup>119</sup> All but two countries remain to ratify it.<sup>120</sup> The pattern of adherence to a treaty is relevant to the argument that its rules have passed into customary law.<sup>121</sup> When many states are a party to a Convention, it is easier to argue that the Convention's rules are customary law.<sup>122</sup>

The continued implementation of the UN sanctions against Iraq exposes several violations of the Convention's rules. The Convention places an affirmative duty on States to advance the children rights cause through administrative, legislative, and judicial measures.<sup>123</sup> Article 6 affirms that it is every State's responsibility to ensure children's inherent right to life and "to the maximum extent possible the survival and development of the child."<sup>124</sup> Article 24 specifically calls on states to take appropriate measures to "diminish infant and child mortality," to ensure necessary medical assistance and health care, and to combat disease and malnutrition...through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into

115. *Id.* at 27.

116. ICCPR, *supra* note 111.

117. UNICEF Report, *supra* note 56.

118. Convention on the Rights of the Child, *entered into force*, Sep. 2, 1990, G.A. Res 44/25, U.N. Doc. A/RES/44/49, *reprinted in* 28 I.L.M. 1448 [hereinafter Convention].

119. UNICEF, *Convention on the Rights of the Child: Frequently Asked Questions, Who has not ratified and why not?* <http://www.unicef.org/crc/crc.htm> (visited Mar. 22, 2000).

120. Somalia has neither signed nor ratified the Convention, and the United States is a signatory member but has not ratified it. Somalia is unable to ratify the Convention since it is in a state of civil war and its government is not internationally recognized. *Id.*

121. Arthur M. Weisburd, *The Significance and Determination of Customary International Human Rights Law: The Effect of Treaties and Other Formal International Acts On the Customary Law of Human Rights*, 25 GA. J. INT'L & COMP. L. 99, 110 (Fall 1995/Winter 1996).

122. *Id.* Nevertheless, the U.N. Charter calls on all member states to abide by Security Council resolutions, even when they conflict with other treaties. U.N. CHARTER art. 103. This may suggest that Security Council Resolution 661 is binding even if does not comply with the Convention on the Rights of the Child.

123. Convention, *supra* note 118.

124. *Id.* art. 6.

consideration the dangers and risks of environmental pollution<sup>125</sup> Article 27 of the Convention provides the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.<sup>126</sup> Despite these responsibilities, the UN continues to ignore the hundreds of thousands of Iraqi children each year who are suffering from the consequences of the economic embargo, which has caused a near breakdown in the Iraqi health care and sanitation systems.<sup>127</sup>

UNESCO once honored Iraq for its active promotion of education.<sup>128</sup> UNICEF's findings now show that Iraq is "experiencing the unavoidable compromise of the Convention on the Rights of the Child for education."<sup>129</sup> Every level of formal and informal education suffers from lack of the most basic school necessities such as electricity, sanitation and supplies.<sup>130</sup> Blackboards, chalk, pencils, notebooks and paper are among items designated by the Sanctions Committee as "non-essential."<sup>131</sup>

This is clearly a violation of Article 17 of the Convention, which calls on all States to provide children with access to information and material from a diversity of national and international sources that benefit the social and cultural well being of the child.<sup>132</sup> It also encourages the production and dissemination of children's books.<sup>133</sup> A similar provision in Article 13 grants that "[t]he child shall have the right to freedom of expression. . . [including the] freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally. . . or in print."<sup>134</sup>

The UN sanctions also violate Article 28 of the Convention, governing the child's right to education. It states that parties shall "promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge."<sup>135</sup>

Iraq is not capable of caring for as many children in the same way as previously.<sup>136</sup> For example, the literacy rate increased from 52

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125. *Id.* art. 24.

126. *Id.* art. 27.

127. *See generally* UNICEF Report, *supra* note 56.

128. *Id.* at 88.

129. *Id.*

130. *Id.* at 80.

131. *Id.* at 87.

132. Convention, *supra* note 118, art. 17.

133. *Id.*

134. *Id.*, art. 13.

135. *Id.*, art. 28.

136. Special Topics on Social Conditions in Iraq, An Overview Submitted by the U.N.

percent in 1977 to 80 percent in 1987.<sup>137</sup> However, five years after the sanctions were implemented, the illiteracy rate was 42 percent and the government estimated that illiteracy was increasing at an average rate of about 5 percent annually.<sup>138</sup>

One way of addressing these issues may be to teach the rights of the child in schools and to refugee children. Article 12 of the Convention states that "the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child."<sup>139</sup> School is a proper environment for developing children's ability to freely express himself.

Iraq policy makers have claimed that Iraq has tried to comply with the Convention on the Rights of the Child, but that its efforts are muted by the shock of the sanctions. Iraqi officials attribute a rising school drop out rate to the increasing number of children between twelve and sixteen years who have been forced to leave school and help their needy families as a consequence of the economic embargo.<sup>140</sup>

Inaccessibility to safe drinking water and absent or defunct sanitation is the likely cause for increases in malnutrition and mortality rates.<sup>141</sup> Instead of allowing Iraq to take advantage of its natural resources to benefit its citizens, the sanctions deprive Iraq of basic medical materials such as auto-destruct syringes and bandages.<sup>142</sup> Lines of patients wait to receive medicine in Baghdad, sometimes when only 30% of the stock is available for the normal needs of the patients.<sup>143</sup> Diseases such as malaria and typhoid were almost under control prior to the sanctions, but are now re-emerging and threatening to appear in areas that previously were not affected.<sup>144</sup> Before the sanctions in 1990, primary medical care reached about 97% of the urban population, and 78% of rural residents.<sup>145</sup> Now there are severe shortages of medical equipment and supplies.

At a 1998 session of the Committee on the Rights of the Child, an Iraqi representative stated that the implementation of the embargo had prevented the government from combating malnutrition.<sup>146</sup> In 1988, the

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System to the Security Council Panel on Humanitarian Issues, Mar. 24, 1999, at 30, 31.

137. *Id.*

138. *Id.*

139. Convention, *supra* note 118, art. 12.

140. G.A. Comm. on the Rights of the Child, 19<sup>th</sup> Sess., 484<sup>th</sup> mtg., U.N. Doc. CRC/C/SR 484 (1998).

141. UNICEF Report, *supra* note 56, at 32. Water distribution network on which most of the population relies contains broken or destroyed pipes. Treatment plants lack spare parts, equipment, chemicals and an adequate staff. *Id.*

142. *Id.* at 41.

143. *Id.*

144. *Id.* at 52.

145. *Id.* at 7.

146. G.A. Comm. on the Rights of the Child, 19<sup>th</sup> Sess., 484<sup>th</sup> mtg., U.N. Doc. CRC/C/SR

daily per capita intake was 3,581 calories and 101.6 grams of protein.<sup>147</sup> In 1997, intake had dropped to 1,030 calories and 24 grams of protein.<sup>148</sup> Beef and chicken are unaffordable for most families.<sup>149</sup> Studies performed by UNICEF and the World Health Organization showed a 22.06 percent rate of emaciation for children under the age of five and a 43.89 percent rate of retarded growth.<sup>150</sup>

After a decade of the sanctions chipping away at the Iraqi economy, it is time to change the adverse impact the sanctions are having on the Iraqi population. It is not an easy challenge. While the UN takes on the responsibility of enforcing international norms, it is dually responsible for mitigating the effects the sanctions have on the Iraqi population.

#### IV. CONCLUSION

The U.S. government announced in January 1999, that it would disburse \$97 million to seven Iraqi opposition groups, including the Iraqi National Congress (INC), in order to back efforts to show a new unified front as an alternative to Saddam's regime.<sup>151</sup> However, more than 70 exiled opposition groups complicate unification.<sup>152</sup> One of the advantages for Saddam has been the disorganization of opposition groups.<sup>153</sup> Additionally, the alternatives to Saddam's leadership seem bleak.<sup>154</sup>

One issue that remains indisputable is that hundreds of thousands of Iraqi civilians suffer as a direct consequence to the UN sanctions implemented over a decade ago. The Security Council is long overdue in investigating alternatives to the sanctions that would relive the dire humanitarian situation in Iraq.<sup>155</sup> The Oil-for-Food program has proved inefficient in providing for civilian needs.

Sanctions are not a humane alternative as applied against Iraq.

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484 (1998).

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

151. The Clinton Administration believes that the INC could be a democratic alternative to Saddam's regime. The INC has broadened its base by admitting representatives from the Shia and the Kurds. It has military forces that could potentially be used for a coup against Saddam. However, the Congress's influence is lessened because of division among its twenty factions. Shobokshi, *supra* note 2.

152. *Id.*

153. *Id.* Squabbling in the INC has destroyed its credibility to some extent. The Democratic Centrist Current is an emerging governmental reform group, but divisions among it are appearing. *Id.*

154. *Id.*

155. Fausey, *supra* note 93, at 217-18.

The UN sanctions are directly responsible for a multitude of deaths, whereas the UN itself has not suffered any casualties. There is substantial evidence of Iraq's attempted compliance with the UN Convention on the Rights of the Child, but it falls short due to lack of resources. The UN should be held responsible for its violations of the Convention. Its economic embargo has stood in the way of Iraq's capability to work within the international framework of cooperation to further economic, social and cultural rights.

If we as a global society are ever going to promote the credibility of our Treaties and Conventions, we cannot ignore the consequences of our actions. The sanctions have failed in their desire to influence compliance from the Iraqi government. There is no justification for unduly hindering Iraq of reaching its economic potential by selling as much oil as is necessary to provide for its civilian needs.<sup>156</sup>

The goals of the sanctions are of enormous importance. Simply ending the sanctions with Saddam's aspirations to dominate the Middle East and without a strong weapons inspection system could have disastrous effects on the people of Iraq and the region. In order to secure peace in the region, the UN needs to keep working on the elimination of Iraqi capability for chemical, biological and nuclear warfare. But the UN must limit and modify its sanctions in order to uphold its credibility that is already jeopardized due to a lack of compliance with the Convention on the Rights of the Child and other principles of humanitarian law for which it stands.

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156. Lifting the sanctions could eventually allow Iraq to export 3-4 million barrels a day, and at a price of \$15 a barrel, Iraq has the potential to earn as much as \$22 billion annually. *Economic Conditions*, POLITICAL RISK SERVICES, Oct. 1, 1998. French, Italian, Russian and potentially Chinese companies have expressed their desire to bid on contracts for the development of Iraqi oil fields once the sanctions are lifted. Shobokshi, *supra* note 2.