Accountability and Global Governance: The Case of Iraq

Joy Gordon

In this essay, I explore issues concerning accountability and global governance by looking at the case of Iraq. The case of Iraq is worth considering with respect to accountability in global governance in part because the economic sanctions against it were the first comprehensive measure imposed in the name of global governance—and they have also been the most devastating to a civilian population. This case presents in the starkest possible form the question of what should be done when an institution such as the UN Security Council, which is explicitly charged with responding to breaches of peace and security, becomes part of a system—the sanctions regime—that causes more damage to the innocent than do most wars. Likewise, it raises the question of what accountability there can be for unilateral actions by individual nations, such as an invasion and occupation, which are then legitimized by institutions of global governance.

I am interested in the humanitarian damage done by economic means partly because of its ethical implications. It is this type of harm that most directly affects the innocent, and from which the political and military elite are most insulated. I am interested in it as well because it often seems amorphous and invisible. Terrible poverty often seems attributable to no one in particular; it rather appears to be a matter of random misfortune, however extreme it may be.

I look at three cases as a way of exploring issues of accountability in the context of global governance and post-conflict scenarios: the Security Council policies regarding the sanctions regime imposed on Iraq; the operation of the Oil-for-Food program; and the U.S.-led occupation authority and its handling of Iraqi funds. The latter two have been the subject of considerable scandal, while the first one ought to be the subject of greater scandal than it has been. In part, the lack of accountability in these cases stems from criminal acts or failures to meet legal responsibilities. I would suggest, however, that there are abuses of power and forms of corruption that are in fact legitimated within established legal structures. In the case of the sanctions

regime and the Oil-for-Food program, abuse occurred despite elaborate measures to prevent it. In the case of the U.S.-led occupation, abuse followed elaborate efforts to eliminate oversight mechanisms. The three situations also raise issues of accountability in very different contexts, ranging from simply stealing money, to defining the concept of "dual use" or determining the outcome of the tension between humanitarian principles and security concerns in a way that caused grave harm. I will not explore the question of "lessons learned" about the need for accountability from the experience of these three cases. The reason is that, in all three cases, it was eminently clear from the inception whose interests were served by accountability, and whose were impeded. The abuses that occurred were never due to a lack of understanding about what might bring greater integrity to the various processes involved. Rather, what they illustrate is how well the lessons of accountability and integrity were already understood, as evidenced by the determined and methodical attempts to evade and compromise these structures.

The notion of accountability is related to the concept of responsibility but is not identical to it.[1] The notion of accountability assumes that an actor is responsible for bringing about certain conditions, or for accomplishing certain things—and is then accountable through some structure of oversight that is in place to ensure that those responsibilities are carried out. In other words, accountability entails a responsibility to "answer" for what one has done.[2] Accountability requires transparency, since the actor's decisions and performance are subject to scrutiny. A structure of accountability provides credibility—it gives others confidence that the actor's responsibilities will be met.[3] Such structures can take many forms, including judicial review, democratic processes, and mechanisms for public transparency. Procedures for seeking accountability entail the right to scrutinize, to demand information, and ultimately to sanction if responsibilities are not met.

We are used to thinking of structures of accountability in law, where someone can be criminally prosecuted for abusing a financial trust, or where a judge's ruling can be overturned for abuse of discretion, or where the separation of powers allows one branch of government to serve as a check on the actions of another. In global governance there are other mechanisms that serve to provide some kind of accountability, some by design and some not. I would suggest that these include not only the

[1] Leif Wenar, "Accountability in International Development Aid," *Ethics & International Affairs* 20, no. 1 (2006) [this issue], pp. 5–7.
[2] I owe this point to Christian Barry.
[3] Wenar, "Accountability in International Development Aid," p. 8.

formal structures, such as judicial venues, but also others, such as the political balance of power or public pressure.

THE SANCTIONS REGIME

The trade sanctions against Iraq were imposed by the UN Security Council with Resolution 661 of August 6, 1990, following Iraq's invasion of Kuwait. They were nearly comprehensive: Iraq was overwhelmingly dependent on oil exports for its income, and the sanctions blocked all exports, including oil. Iraq was overwhelmingly dependent on imports for nearly every sector of the society and economy, and the sanctions also blocked almost all imports.

The UN Charter grants the Security Council, rather than the more broadly representative General Assembly, the authority to take measures in response to aggression, threats to peace, and breaches of peace, and to commit all member states to support these measures (chapter VII). The Security Council is an explicitly countermajoritarian body. There is no permanent representation on it from two-thirds of the world's population, and the veto provision gives enormous power to its five permanent members (the United States, the U.K., France, Russia, and China), the allies from World War II. Even as ideological tensions quickly paralyzed action in the council during the Cold War, they arguably ensured that the balance of power provided a form of accountability—the five permanent members had such disparate and conflicting agendas, that if all agreed about the nature of and required action against a given security threat, their agreement guaranteed the legitimacy of the concern. For most of the Security Council's history, the veto power of the Permanent Five has served as a paralyzing device: any proposal could be vetoed by a permanent member, and the net effect is to constrict decision-making in general. The council lacks almost any other form of accountability. Its decisions cannot be reviewed or modified by the UN Secretariat or the General Assembly. There is no judicial review, except for the extremely weak provisions in Article 96 of the UN Charter regarding the International Court of Justice (ICJ): the Security Council may itself ask the ICJ for an advisory—not a binding—ruling on its own actions.[4]

[4] In the *Lockerbie* case, the ICJ arguably implies that it has the power to review Security Council measures, in that it reviews the Council's ruling in deferring to it, but that has not been followed by any significant or explicit rulings on this issue. *Case Concerning Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)* ICJ General List No. 88 (Feb 27, 1998). The General Assembly may also seek an advisory ruling on any matter (Article 96, UN Charter), and so arguably could seek an opinion regarding an act by the Security Council, but has never done so.

The council is effectively insulated from public scrutiny, or the scrutiny of other Member states, given that nearly all of its meetings are closed and there are no official minutes kept of those meetings.

In the case of the Iraq sanctions, the political accountability provided by the veto, which would otherwise have been available to any of the permanent members, was put out of play by what came to be called the "reverse veto." Resolution 661 did not specify a time limit after which the sanctions would expire. Consequently, the council had to pass a new resolution to end the sanctions. Because of the veto power, any permanent member could block such a resolution, forcing the sanctions to continue indefinitely. Thus, while the sanctions could not have been imposed without the support of the council, and the unanimous support, or at least neutrality, of the permanent members, no such support was necessary for the sanctions to continue. Indeed, by the mid-1990s, political support for the sanctions had deteriorated considerably. In 1991, Martti Ahtisaari, the envoy for the Secretary-General, reported that conditions of life in Iraq were "near apocalyptic."[5] The United Nations Children's Emergency Fund (UNICEF), the Food and Agriculture Organization, the World Food Program, and other UN agencies also issued reports describing the deteriorating conditions. In March 1995, China, France, and Russia circulated a draft resolution to lift the sanctions altogether, and there was considerable pressure to do so over the next eight years.[6] But as long as the United States and the U.K. wanted to maintain the sanctions, they could not be lifted, despite the opposition of the other permanent members and the rest of the council.[7]

Under Resolution 661, a committee of the Security Council was created to oversee the sanctions regime. It came to be known as the "661 Committee," and included delegates from every member state of the Security Council. Part of its mandate was to address violations of the sanctions. For this reason, the committee decided to operate in closed meetings, with restricted circulation of its minutes—even though in fact it spent very little time at all addressing sanctions violations.[8]

---

[5] "Report to the Secretary-General on Humanitarian Needs in Kuwait and Iraq in the Immediate Post-Crisis Environment by a Mission to the Area Led by Mr. Martti Ahtisaari, Under-Secretary General for Administration and Management," March 20, 1991, S/22366, 20 March 1991, para. 8; available at www.casi.org.uk/info/undocs/s22366.html.

[6] See the discussion of the debate preceding the adoption of SCR 1284, "Campaign Against Sanctions on Iraq: Analysis of Security Council Resolution 1284 (17 December 1999)," Occasional Briefing 2, December 24, 1999; available at www.casi.org.uk/briefing/ob2.html.

[7] The sanctions regime ended in SC Res 1483, passed in May 2003, which both lifted the nonmilitary sanctions and recognized the U.S.-led occupation authority in Iraq.

[8] A study by Paul Conlon of the first several years of the committee's operations found that it in fact spent only 2.5 percent of its time addressing violations. Paul Conlon, *United Nations Sanctions Management: A Case Study of the Iraq Sanctions Committee, 1990–1994* (Ardsley, N.Y.: Transnational Publishers, Inc., 2000), p. 34.

One of the early disputes over the sanctions regime concerned the interpretation of Article 3(c) of Resolution 661, which provided that Iraq could import food in "humanitarian circumstances." Prior to the imposition of the sanctions, Iraq had imported about two-thirds of its food supply.[9] In addition, Iraq was heavily dependent on imported equipment and inputs for the food that was produced domestically. Weeks after the sanctions were imposed, a ferocious debate began within the 661 Committee over the interpretation of "humanitarian circumstances," and it continued until Resolution 687 removed the restriction on food imports.[10] Cuba and Yemen maintained that humanitarian circumstances obtained as soon as there was any deprivation of nutrition at all in the country. In contrast, the United States and the U.K. maintained that humanitarian circumstances did not obtain until famine conditions set in. They demanded that there be convincing evidence of actual food shortages before agreeing to any food imports. Because any decision to allow food imports required consensus of all committee members, food imports were blocked for several months.

The interpretation of a resolution's language could well be seen as a legal question. Some on the 661 Committee argued that international humanitarian law applied, and that the UN Charter, the Geneva Conventions, and other sources of international law prohibited the deprivation of food. But the matter could not be presented to the ICJ for an advisory ruling unless the Council voted to do so—and the United States, the U.K., and France would not have supported such a decision. No such motion was ever introduced.

Had its meetings been public, the 661 Committee might have come under considerable political pressure to lift the restrictions from the press, UN member states, and human rights organizations, since blocking food imports to a country that would certainly face imminent food shortages is difficult to justify. At other times during the sanctions regime, the United States proved to be extremely sensitive about questions related to allowing imports of humanitarian items. In the winter of 2001, for example, diplomats on the 661 Committee told the press about the United States' long-standing policy of blocking Iraq's import of child vaccines on the ground that those could be used to produce biological weapons, even though the weapons experts at the United Nations Monitoring, Verification, and Inspection

[9] Food and Agriculture Organization and World Food Program, "Special Report: FAO/WFP Food Supply And Nutrition Assessment Mission To Iraq," October 3, 1997, Section 1; available at www.fao.org/WAICENT/faoinfo/economic/giews/english/alertes/srirq997.htm.

[10] UNSC Res. 687, April 3, 1991, para. 20.

Commission (UNMOVIC) stated that there was no possibility that the vaccines in question could be converted to serve as biological weapons.[11] The situation was extremely embarrassing, and the United States responded shortly after with an aggressive initiative to restructure the process in a way that would prevent such criticisms in the future. What was described as the "smart sanctions" initiative in May and June of 2001 sought to establish a list of objectionable goods, which while embodying only the concerns of the United States, was intended to be adopted as a policy of the committee as a whole. Although this initiative failed, what came to be known as the "Goods Review List" was eventually adopted, and went into effect the following year.

In addition to the issue of humanitarian imports, there was a much more far-reaching decision that likewise undermined any accountability that might have been provided by neutral judges, representative political bodies, or even simple transparency. This decision reflected the basic tension between security and humanitarian concerns that marked the entire history of the sanctions regime. Within the 661 Committee, the United States (and to a lesser extent, the U.K.) was preoccupied with the concern that the Iraqi regime might import goods that could be used for military purposes, particularly for weapons of mass destruction. There were two routes available to Iraq for legal imports. Under the sanctions regime, Iraq could seek permission from the 661 Committee to purchase goods for humanitarian purposes but was not permitted to sell oil to raise funds for those purchases. The other route was through the Oil-for-Food program, which was established in 1996. It allowed Iraq to sell oil to generate funds, and then to buy goods that were monitored extensively by UN staff as well as the members of the Security Council. In both contexts, each purchase required the agreement—or at least the absence of any objection—of every member of the Council.

From 1990 to 1995, humanitarian contracts were blocked by the United States, the U.K., France, and occasionally by elected members of the Council. Under the Oil-for-Food program, the United States was responsible for virtually all the goods that were blocked or placed on hold. Because the 661 Committee operated by vote, rather than by precedent or in accordance with stated criteria (beyond the broad mandate to prevent Iraq from rebuilding its military), there were often extreme inconsistencies. For example, Iraq would be allowed to import ambulances on one occasion, only to be denied an identical application a few months later, without explanation.

[11] "US and France Clash over Holds on Child Vaccines for Iraq," *Agence France Presse*, March 8, 2001.

The committee allowed Iraq to buy premade furniture and clothing, but consistently blocked Iraq from buying any wood, cloth, or thread. In addition, it was unclear how the committee's decisions could be justified by the mandate to prevent Iraq from rebuilding its military or acquiring prohibited weapons. For example, in the early 1990s, the United States consistently blocked Iraq from importing any form of glue, leaving the other members of the committee baffled as to how glue could pose a military threat.

Under the Oil-for-Food program, one of the major controversies within the 661 Committee concerned the United States' decisions to block or delay humanitarian import contracts on a massive scale. As of November 1998, the United States had placed about $150 million worth of critical goods on hold; by July 2002, the goods had grown to $5 billion worth, equal to one-quarter of all the humanitarian goods delivered to Iraq over the entire history of the Oil-for-Food program up to that point. All of these were goods that the UN agencies had already approved as necessary for the infrastructure of Iraq and for the provision of basic needs, such as health care, education, electricity, housing construction, and so on. The United States blocked almost all goods for three sectors: electricity, transportation, and telecommunication; prevented import of substantial goods in other areas, such as construction and water and sanitation; but allowed in most goods related to education and health care. U.S. policy was to block goods that it viewed as being "dual use"—having both a military and civilian use—and it took the view that all infrastructure was dual use. There is a legitimate argument for this: it is quite true that electricity is used by the military, as are trucks and radios. It is also true, however, that these goods are essential for human survival in an industrialized society. The most critical example concerns potable water: without electricity to run water and sewage treatment plants, there is likely to be an immediate and massive increase in water-borne diseases such as cholera, typhoid, and dysentery. These have particularly harsh impacts on infants and young children. Without adequate water treatment, child mortality skyrocketed immediately. When Iraq's electricity generators were destroyed, along with many water and sewage treatment plants immediately after the Persian Gulf War in 1991, child mortality increased by approximately 250 percent, and never substantially decreased afterwards.[12]

[12] UNICEF, "Child and Maternal Mortality Survey 1999: Preliminary Report" (Iraq: UNICEF, 1999), p. 10; available at fas.org/news/iraq/1999/08/990812-unicef.htm.

Nonetheless, the United States consistently used its veto power to block electrical production. For example, the United States agreed to allow Iraq to import a sewage treatment plant, but then blocked the electrical generator needed to run it. Similarly, it permitted Iraq to import medicines and food, but then blocked the refrigeration needed to maintain the cold chain for vaccines and the trucks needed to transport food and other goods. All of this was done on the grounds that these goods were dual use.

The U.K. occasionally blocked some items, but on a much smaller scale. Of all the contracts placed on hold, the U.K. was generally responsible for 3–5 percent, and the United States was responsible for all the others. Throughout the duration of the Oil-for-Food program, no other countries blocked humanitarian imports.[13]

There were two critical reasons for this state of affairs. One was the United States' decision to treat all infrastructure as being dual use, thereby blocking in large measure the fundamental goods and processes required by a modern economy. The other was the decision to use a risk analysis, rather than a risk-benefit, calculation. That is, the U.S. personnel responsible for making decisions on these contracts asked: Is there any chance, however speculative, that these items might somehow have some military use? A risk-benefit calculation would have been quite different. It would have demanded that such personnel ask: What is the likelihood that these items will be used for military purposes, what is the seriousness of the potential damage of such use, and is guarding against this risk justified, given the likelihood and extent of harm to civilians if the goods are not released?

Who determines what constitutes "dual use?" Clearly, other members of the Security Council had a different view about the appropriate answer to this question than did the United States. Even the U.K., which was allied with the United States on virtually every other policy and vote in this area, diverged on this question. The other members of the Security Council, including all the elected members over the life of the Oil-for-Food program, chose not to follow suit. Many opposed this policy vociferously. Who determines what standard of certainty should be used to judge the possibility that goods might be used for military purposes? As exemplified by the case of child vaccines, a public debate could well have brought considerable pressure brought to bear on the United States' view of this question. Also, if the Security Council or the 661 Committee had operated by majority vote, the policies that they adopted would have been quite different.

[13] See Joy Gordon, "Cool War: Economic Sanctions as a Weapon of Mass Destruction," *Harper's Magazine* (November 2002).

The right of each member of the Security Council to block goods at will, or to define for itself the legitimate range of reasons to block humanitarian goods, turns out to have caused far more harm than a massive bombing campaign. The well-known UNICEF study of 1999 found that sanctions resulted in the deaths of some 500,000 children under the age of five who would have otherwise lived.[14] When evaluating military actions, we are used to returning to the old just war standards of proportionality and discrimination. But what if it is not at all war that is involved in inflicting harm? What if the bureaucratic devices within a sanctions regime result in damage that the principles of proportionality or discrimination could not possibly accommodate?

If it were possible to bring suit against the Security Council before the ICJ or some other judicial venue, the legal issues surrounding the sanctions regime might have been addressed. However, in the end, the consensus structure, the closed meetings, and the lack of judicial recourse meant that there was no form of accountability, nor any possibility of obtaining independent review of the judgments and factual claims involved, even though the humanitarian damage from these policies was massive, entirely foreseeable, and ongoing for several years.

THE OIL-FOR-FOOD PROGRAM

The Oil-for-Food program, which operated from December 1996 to November 2003, contained elaborate measures of oversight regarding Iraq's oil sales and the use of oil proceeds for humanitarian goods. These measures addressed not only the handling of funds, but also whether the Iraqi government was following appropriate humanitarian priorities in its purchasing decisions, and whether goods were distributed equitably and efficiently upon their arrival.

Under the terms of the Oil-for-Food program, governmental services in Iraq's three northern governorates were provided by United Nations agencies on behalf of the Iraqi government. In the majority of the country, the south and the center, the government of Iraq continued to perform governmental functions to meet the basic needs of the population, but under close monitoring. The monitoring structure for southern and central Iraq included the following levels of oversight:

[14] UNICEF, "Child and Maternal Mortality Survey 1999."

1. Distribution plan. Before Iraq was even permitted to begin negotiating import contracts, Iraq was required to submit an exhaustive list of the items it wished to import, identifying quantities and sectors where goods would be used, and the justification for prioritizing these goods. The distribution plans, which had to be submitted each six months, then had to be reviewed and approved by UN staff, often with modifications.
2. Office of Iraq Program (OIP) review. Once a contract was negotiated between the Iraqi government and the supplier, it was submitted to the OIP, the agency created within the Secretariat to manage the UN's programs in Iraq. OIP staff reviewed the distribution plan to see that it contained all the information required by the 661 Committee, and corresponded to the distribution plan.
3. United Nations weapons inspectors (UNSCOM and UNMOVIC). The contract was also sent to UNSCOM (later to UNMOVIC) and the International Atomic Energy Agency, to determine if there were any military or dual use goods.
4. 661 Committee review. The contract was circulated to every member of the 661 Committee.[15] Each member had the option of delaying the contract, asking for more information, or simply vetoing it.
5. Escrow account. Under the terms of the program, no funds ever went directly through the hands of the Iraqi government. All proceeds from legal oil sales went into a UN-held escrow account, and all import contracts were paid for from this account.
6. On-site inspectors. Upon arrival in Iraq, the goods were inspected by Lloyd's Register (later Cotecna) to see that the quantities conformed to the contract.
7. End-use monitors. Once the goods arrived in Iraq, UN staff conducted thousands of site visits, surveys, and spot checks to determine if the goods were being distributed equitably and efficiently, and to gauge the adequacy of the program.

For oil sales, there were also multiple levels of review. The Iraqi government proposed pricing formulas, which were then reviewed by "oil overseers" and submitted to the 661 Committee for approval. Each oil contract, including prices, delivery specifications, and all contract terms, was reviewed by oil overseers—consultants from the oil industry hired by the Secretary-General, with the approval of the members of the Security Council—who advised the 661 Committee of any irregularities.

[15] Some goods that the Security Council considered uncontroversial were eventually put on a "green list" that bypassed the 661 Committee (pursuant to Security Council Resolution 1409) but went through all the other monitoring stages. However, if OIP staff found irregularities in "green list" contracts, they presented those to the 661 Committee.

The 661 Committee approved the pricing and terms for every sales period and the list of permissible purchasers. Any member of the committee could withhold consent to the pricing or veto any purchaser.

There were also multiple levels of transparency. The distribution plans were (and for phases 5–13 the program continue to be) posted on the OIP's Web site. The Secretary-General provided reports every ninety days, including detailed information on oil sales and import contracts and on the situation in every sector of the Iraqi economy and society, including health care, agriculture and nutrition, education, electricity production, telecommunications, transportation, and de-mining. All of these reports were (and still are) posted on the OIP's Web site. For every six-month phase, the OIP posted charts showing the status of both oil and import contracts: for every sector of the economy, how many contracts had been submitted, how many had been approved, how much had been delivered, and so on. All of these were posted for each phase on the OIP's Web site. The OIP issued weekly updates with details of oil liftings, the status of holds on particular contracts, and other items. All of these were (and are) posted on the OIP Web site. The Web site also listed every Security Council resolution, Secretary-General's report, and every other major report on the program. Every member of the 661 Committee had access to every contract, both for imports and oil sales. Every member of the committee could request any information it wished, about any aspect of any contract, and could delay approval of the contract indefinitely until it was satisfied with the information received.

In its last two years, the Oil-for-Food program was harshly criticized in hearings in the U.S. Congress, as well as in reports by the U.S. Government Accountability Office,[16] the CIA's Duelfer Report,[17] and a UN investigatory committee headed by Paul Volcker.[18] The Volcker committee report found that there may have been a conflict of interest in the awarding of one contract (to Cotecna); that there were attempts by Iraq to use lobbyists to transmit funds to UN officials; and that the director of the Oil-for-Food program improperly received vouchers to purchase oil from Iraq. The committee also estimated that Iraq was able to obtain $1.8 billion

[16] United States General Accounting Office, "United Nations: Observations on the Oil-for-Food Program," testimony of Joseph A. Christoff to the Committee on Foreign Relations, U.S. Senate, GAO-04-65IT; available at www.gao.gov/new.items/d04651t.pdf.

[17] Central Intelligence Agency, "Comprehensive Report of the Special Advisor to the DCI on Iraq's WMD," September 30, 2004; available at www.cia.gov/cia/reports/iraq_wmd_2004/.

[18] Independent Inquiry Committee, "The Management of the United Nations Oil-for-Food Programme," Vols. I, II, and III, September 7, 2005; available at www.iic-offp.org/Mgmt_Report.htm.

illicitly through kickbacks and surcharges, over the seven-year life of the program, which involved some $100 billion in transactions.[19]

Despite these issues, it seems that the oversight mechanisms and structures of transparency generally functioned well. The bulk of the kickbacks took place when Iraqi ministries tacked on 5–10 percent increases to import contracts, and the vendors then returned those funds in cash under the table. While 5–10 percent increases were largely undetectable, price irregularities that were more obvious were in fact noticed by the UN staff. On more than seventy occasions, the OIP staff informed the 661 Committee of contracts with pricing irregularities that indicated that kickbacks were very likely occurring.[20] Any member of the committee then had the power to block those contracts. However, none did. This includes the United States, which was exclusively concerned with military and dual-use imports. In addition, for a period of time in the fall of 2000, Iraq sold oil at low prices and then charged the purchaser an additional fee under the table, which was paid in cash. The total income Iraq received from this practice is estimated to have been $229 million.[21] Shortly after Iraq began this practice, the UN's oil overseers informed the 661 Committee.[22] The United States and the U.K. then began unilaterally withholding approval for all oil sales, until after the sales period had passed, forcing buyers to sign blind contracts, binding them to oil purchases without knowing at the time what the price would be. This practice immediately made the illicit surcharges impossible. However, while it illustrated the effectiveness of the committee as an oversight body, it had another consequence as well: it made oil purchases commercially infeasible. Oil sales collapsed, income to the program dropped precipitously, and several billion dollars of critical humanitarian purchases had to be cancelled.

To the extent that the Iraqi regime was able to garner illicit funds via the Oil-for-Food Program, this took place not for lack of oversight and transparency, but rather in spite of an elaborate system of oversight and transparency that was built into the program. The expertise and efforts of the staff of the UN humanitarian agencies were directly responsible for ensuring that the priorities for imports were based on sound humanitarian decisions, and that goods were distributed effectively and equitably.

---

[19] Ibid., Vol. II, pp. 34 and 37.

[20] Author's interview with former OIP staff, August 2004.

[21] GAO, "United Nations," p. 2.

[22] Independent Inquiry Committee, "The Management of the United Nations Oil-for-Food Programme," Vol. II, p. 135.

However dramatic the accusations of abuse were, in reality the consequences were much less significant. In the case of the oil surcharges, the financial improprieties were marginal and quickly remedied. In the case of Cotecna, there was not even a claim that the company did not in fact perform its duties perfectly well, and there was no discernible impact on the program's operations. The worst case, Benon Sevan's receipt of oil vouchers, involved only a single person. It would seem that the system of oversight and transparency was in fact quite effective.

THE COALITION PROVISIONAL AUTHORITY

In contrast, the Coalition Provisional Authority (CPA), the occupation authority established after the U.S.-led invasion of Iraq in 2003, operated under far less oversight and transparency, and with abuses that were far more extensive and systemic. While there have been inquiries into abuses and some prosecutions, the basic structure that permitted large-scale fraud and mismanagement of funds was itself legitimated by the Security Council.[23] In May 2003, the United States sponsored Security Council Resolution 1483, which recognized the CPA's authority and established the framework for its operation. Resolution 1483 eliminated the Oil-for-Food program, as well as every form of oversight and accountability that had been in place under the program or within the Iraq sanctions regime generally. With regard to disarmament, the role of UN and international weapons inspectors was eliminated and the mandates of UNMOVIC and the International Atomic Energy Agency (IAEA) were to be "revisited."[24] The resolution terminated the role of UN monitors, both those monitoring the humanitarian situation and oil overseers monitoring oil sales.[25] It eliminated the 661 Committee, which was the mechanism put in place by the Security Council to monitor the situation in Iraq and provide the members of the Council with information.[26] In its place, Security Council Resolution 1518 established a committee whose sole function is to locate Iraqi assets abroad so that they can be transferred into the fund set up by the CPA. Resolution 1518 explicitly removed any role for the Security Council in supervising the CPA or ensuring its conformity with international law. The United States and the U.K. were "encouraged" to report to the Council at "regular intervals," but the Council has no right to

[23] These include human rights violations, such as the infamous abuse of Iraqi prisoners at Abu Ghraib, as well as congressional investigations into contract abuses by Halliburton and its subsidiary Kellogg, Brown & Root.
[24] UNSC Res. 1483, May 22, 2003, para. 11.
[25] Ibid., para. 18.
[26] Ibid., para. 19.

provide supervision, intervene, or even require reports.[27] Later resolutions provided for some additional reporting—for example, Security Council Resolution 1546 requests that the United States report quarterly on the progress of the military force—but with no substantive mandate for oversight.[28] Further, resolution 1518 provided no role assigned the Secretary-General in overseeing the occupation. The only role assigned the Secretariat is the coordination of UN activities and those of NGOs in Iraq.[29] It terminated the Oil-for-Food program, and with it the entire process for reviewing the priorities or plans regarding food distribution, health care, or reconstruction, which was in place to ensure equity, adequacy, and efficiency of the humanitarian program.[30]

Security Council Resolution 1483 established the Development Fund of Iraq (DFI) to hold proceeds from Iraq's oil sales, as well as other funds. All the money from this fund was to be disbursed solely "at the direction of the CPA," in consultation with the Iraqi interim administration.[31] Resolution 1483 and other Security Council resolutions mandated that the DFI "shall be used in a transparent manner to meet the humanitarian needs of the Iraqi people, for the economic reconstruction and repair of Iraq's infrastructure, for the continued disarmament of Iraq, and for the costs of Iraqi civilian administration, and for other purposes benefiting the people of Iraq."[32]

Despite this mandate, the U.S. Department of Defense issued a formal ruling that Iraqi funds could only be spent for contracts with companies of the Untied States, its allies, and Iraq. In the end, the overwhelming majority of contracts went to U.S. companies, a few went to British ones, and occasional contracts went to other countries participating in the coalition. No primary contracts went to Iraqi companies at all.[33]

It also established the International Advisory and Monitoring Board (IAMB) to monitor the funds, which retained the accounting firm KPMG to audit the DFI.[34] In addition, the office of the Inspector General of the CPA conducted audits,[35] as did

---

[27] Ibid.
[28] UNSC Res. 1546, June 8, 2004, para. 31.
[29] UNSC Res. 1483, para. 8.
[30] Ibid., para. 16.
[31] Ibid., para. 12–13.
[32] Ibid., para. 14.
[33] Open Society Institute and United Nations Foundation, "Iraq in Transition: Post-conflict Challenges and Opportunities," November 2004, p. 61; available at www.unfoundation.org/files/pdf/2004/iraq_Transition.pdf.
[34] The audit reports are available at www.iamb.info.
[35] After June 2004, this office became the Special Inspector General for Iraq Reconstruction (SIGIR). Audit reports are available at www.sigir.mil.

the Defense Contract Audit Agency.[36] The released audits reveal massive, systematic abuses, far more extensive than those that allegedly occurred under the Oil-for-Food program.

From the beginning, the United States sought to limit the IAMB's effectiveness. Although the IAMB was created in May 2003, it did not hold its first meeting until December 2003. This was due to a dispute between the CPA and the IAMB over its mandate. The IAMB wanted the authority to conduct "special audits"—in-depth audits of particular expenditures. Paul Bremer, the administrator of the CPA, opposed special audits and for months refused to approve the board's mandate unless he was given the power to veto audits he found unacceptable.[37] Eventually the CPA conceded. By that time, its assets totaled some $5 billion, and it had spent $1.5 billion, all without any independent monitoring.[38]

In several crucial regards, the CPA did not even follow its own standards for accountability. The CPA's Regulation No. 2 required the Department of Defense to retain an independent certified public accounting firm to ensure that the DFI funds were used transparently.[39] Instead, rather astonishingly, the CPA awarded the contract to North Star consultants, a financial services firm that was not a certified public accounting firm, and was not qualified to perform the required audits.[40] The CPA comptroller then "verbally modified" the contract and used the firm to perform accounting tasks in the comptroller's office.[41]

One of the "priority findings" of an early audit was a concern with the critical absence of metering equipment in oil extraction.[42] The fact that there was no metering equipment of the sort that is standard in the oil industry meant that it was impossible to know whether (and how much) oil was being exported, and how much, if any, was misappropriated. The CPA acknowledged "that some of Iraq's oil

---

[36] Several of these are available at www.democrats.reform.house.gov/story.asp?ID=846&Issue=Iraq+Reconstruction.

[37] Open Society Institute, "Keeping Secrets: America and Iraq's Public Finances," Iraq Revenue Watch Report no. 3, October 2003, p. 4; available at www.iraqrevenuewatch.org/reports/101403.pdf.

[38] Open Society Institute, "Open Society Institute Supports Establishment of New Monitoring Board in Iraq: Calls for Vigilant Oversight," Revenue Watch Briefing no. 4, December 2003, p. 2; available at www.iraqrevenuewatch.org/reports/120503.pdf.

[39] Coalition Provisional Authority Regulation No. 2, "The Development Fund For Iraq," June 10, 2003, p. 5, sec. 7.

[40] SIGIR, "Oversight of Funds Provided to Iraqi Ministries Through the National Budget Process," Audit Report no. 05–004, January 30, 2005, pp. 8–9.

[41] Office of the Inspector General of the Coalition Provisional Authority, "Comptroller Cash Management Controls over the Development Fund for Iraq," Audit Report No. 04–009, July 28, 2004, p. 7.

[42] IAMB, "Statement of the IAMB—Release of the KPMG Audit Reports on the Development Fund of Iraq," July 15, 2004, p. 2; and IAMB, "Report of International Advisory and Monitoring Board on Iraq of the Development Fund of Iraq: Covering the Period From the Establishment of the Development Fund of Iraq on May 22, 2003 Until the Dissolution of the Coalition Provisional Authority on June 28, 2004," p. 3.

resources were not accounted for and had been smuggled."[43] Some months later, the CPA reported that it had awarded an oil metering contract, but then informed the IAMB that it had not concluded the oil metering contract after all because of "security and technical issues." When the CPA's mandate ended in June 2004, the metering had still not been installed.[44]

The CPA's Memorandum No. 4 laid out very explicit requirements for contracting and expenditures. Yet according to a KPMG audit report, the CPA did not maintain enough accounting records for contractual commitments entered into by U.S. agencies to even provide a list of contracts that had been signed while the CPA was in existence.[45] Following the report, the CPA asked every U.S. agency to list all its known contractual commitments. But the Iraqi Ministry of Finance believed that even that list was incomplete and inaccurate. There was so little documentation available that the auditor found that it was not feasible to even try to determine whether the list was accurate and complete.[46] In response, the U.S. agencies planned to provide documentation for these contracts by September 30, 2005, fifteen months after the CPA stopped existing.[47]

In a memorandum laying out the rules for contracting involving the commitment of Iraqi funds, Paul Bremer explicitly required contracting officers to ensure that prices were "fair and reasonable" before committing to a contract. But in July 2004, the CPA's own inspector general found that contracting officers had often failed to do this. A few months later, a Department of Defense audit found that the CPA "did not perform or support price reasonableness determinations." This resulted in contracts, often going to U.S. firms, in which the CPA committed Iraqi funds to paying grossly inflated costs. In one notorious case, Custer Battles, a nine-month-old company started by two former Army rangers, charged $20 million for providing security guards for six months. The actual cost to the company was $840,000. Thus, 95 percent of the contract was simply profit.[48]

---

[43] Ibid., p. 4, para. 3 and 4.

[44] KPMG Bahrain, "Development Fund of Iraq: Report of Factual Findings in Connection with Export Sales for the Period 1 January 2004 to 28 June 2004," September 2004, p. 4.

[45] IAMB, "DFI Statement of cash receipts and payments, June 29, 2004–31 Dec 2004 (with independent auditors' report)," p. 2.

[46] Ibid., p. 2.

[47] KPMG Bahrain, "DFI Management Letter on Internal Control, 29 June 2004–31 December 2004," p. 13.

[48] Neil King Jr. and Yoshi J. Dreazen, "Amid the Chaos in Iraq, Tiny Security Firm Carved out Opportunity," Iraq Reconstruction Report, August 19, 2004; cited in Open Society Institute, "Disorder, Neglect and Mismanagement: How the CPA Handled Iraq Reconstruction Funds," Iraq Revenue Watch Report no. 7, September 2004, p. 8; available at www.iraqrevenuewatch.org/reports/092404.pdf.

But the more serious problem was actually the massive number of files with so much documentation missing that the auditors could not even tell whether payments had been made, or whether the contract had actually been performed. In one case, of $400 million that had been made available for disbursement, as much as $50 million was given out without correct paperwork showing payment. In December 2004, an IAMB report noted that there were "hundreds of irregularities" in the CPA's contracting process, including missing contract information and payment for contracts that had not been supervised. A KPMG audit for the first half of 2004 found thirty-seven cases involving $185 million contracts, where contract files could simply not be located. There were 111 cases in which no documentation could be found for services performed under the contracts.[49] The spreadsheets kept by the CPA were so poorly maintained that auditors could not locate thirteen of sixty-two contract files listed. Of the purchase contracts examined, 67 percent had incomplete or missing documentation. The CPA's own inspector general in one audit report was "unable to determine if the goods specified in the contract were ever received, the total amount of payments made to the contractor, or if the contractor fully complied with the requirements of the contract."[50] Of twenty-six paid receipts that were examined in one audit, twenty-five had no supporting invoices and all of them were missing required signatures.[51]

The largest quantity of funds disbursed without accountability involved the transfer of approximately $8.8 billion in DFI funds to Iraqi ministries. For these funds, according to Stuart W. Bowen, the United States' Special Inspector General for Reconstruction of Iraq, there was so little transparency that there was simply no way of knowing where the funds went or how they were used.[52] In a congressional hearing, Bowen testified that the CPA had so few controls—financial, managerial, or contractual—that it was impossible to know what happened to the funds after they were handed over to the Iraqi ministries, even the ministries that were under the control of U.S. personnel.

The CPA complained that it was unfair to fault them for these failures, because the Iraqi government was in such poor condition—the civil service barely functioned, there were corrupt pay systems, and so on. Bowen viewed it differently. The

[49] KPMG Bahrain, "Development Fund for Iraq: Report of Factual Findings in Connection with Disbursement for the Period 1 January 2004 through 28 June 2004," September 2004, p. 18.

[50] Office of the Inspector General of the Coalition Provisional Authority, "CPA's Contracting Process Leading up to and Including Contract Award," Audit Report no. 04–013, July 27, 2004, p. 2.

[51] Open Society Institute, Iraq Revenue Watch Report no. 7, September 2004, pp. 3–4.

[52] SIGIR, "Oversight of Funds Provided to Iraqi Ministries Through the National Budget Process," p. ii.

CPA's mandate in Iraq under Resolution 1483 was specifically to build a system that functioned honestly and transparently and that used the national wealth for the good of the Iraqi people. According to Bowen, "The CPA should have established controls and provided oversight over the financial management of DFI funds precisely because there was no functioning Iraqi government, no budget or personnel records, and the payroll systems were corrupted."[53] The corruption and lack of recordkeeping were exactly what the CPA was charged in principle with correcting, especially when the ministries were in fact being run by American CPA personnel.[54]

One transfer of $1.4 billion was made from the DFI to an Iraqi ministry with no explanation or documentation other than the words "transfer of funds." In just the last six months of the CPA's operations, auditors found "hundreds of deviations" from required accounting practices, involving disbursements worth over $4 billion. By the time the U.S. occupation authority handed over control in June 2004, the Iraqi fund had been emptied out almost completely. Of the nearly $21 billion of the fund's assets, the CPA had left Iraq with less than $3 billion, along with billions more in contractual commitments for services of questionable use to Iraq, for which the new Iraqi government was obligated to pay.[55]

CONCLUSION

We often think of accountability in terms of financial corruption. In the case of the Oil-for-Food program, there were elaborate structures of financial accountability and transparency. Despite these, about $1.8 billion were lost in kickbacks over an eight-year period, and $7 billion in smuggling that did not involve the Oil-for-Food program over a period of thirteen years. Yet overall, the program's oversight measures were quite effective in many regards. Humanitarian experts were involved at multiple levels to try to ensure that goods purchased with Oil-for-Food program funds reflected sound humanitarian priorities, and that goods were distributed equitably and efficiently. The Volcker committee's report found that the Oil-for-Food program in fact had a substantial positive impact on the humanitarian situation in Iraq.[56]

[53] Stuart W. Bowen, Jr., statement before the Committee on Government Reform, Subcommittee on National Security, Emerging Threats, and International Relations, U.S. Congress, June 21, 2005, p. 5; available at www.sigir.mil/pdf/Testimony_HGR-NSETIR_06-21-05_FINAL.pdf.

[54] Ibid., p. 6.

[55] Coalition Provisional Authority, "The Development Fund for Iraq, Financial Reporting Matrix," June 26, 2004; available at www.iraqcoalition.org/budget/DFI_intro1.html.

[56] See Independent Inquiry Committee, "Impact of the Oil-for-Food Programme on the Iraqi People," September 7, 2005; available at www.iic-offp.org/documents/Sept05/WG_Impact.pdf.

While there were sustained, systematic efforts by the Iraqi government to obtain illicit funds through the program, they were only marginally successful.

By contrast, under the CPA, there were financial improprieties on a much greater level, including $8.8 billion of fund transfers to Iraqi ministries, and $4 billion of questionable disbursements within a fourteen-month period. In addition, the decisions about what goods and services would be purchased with Iraqi funds were deeply distorted by practices of self-dealing, with little interest in seeing that contracts conformed to systematic, humanitarian priorities. This is not because there was any lack of understanding about the sorts of accountability that should be in place to ensure that such priorities were carried out. Indeed, we can see from the mechanisms implemented—and those eliminated—that those who designed these policies were well aware of the mechanisms that should have been in place. Resolution 1483 eliminated any role for international humanitarian experts in reviewing contracts to determine if they were useful and appropriate in reconstruction; and, during the following year, there were massive amounts of funds spent on services and goods of little value to Iraq. The CPA was mandated to implement measures that were transparent and beneficial to Iraq—but the oversight mechanisms consisted only of audits, without any form of penalties or means of enforcement.

In the U.S.-led occupation of Iraq, the deviations from transparency were massive and systematic from the beginning. But it was also the case that whatever transparency did exist did not do much good. The Department of Defense was completely transparent in generating an explicit policy that Iraqi funds could not be used for contracts with companies from nations other than the United States and its allies—that is, that Iraqi funds would first be used to serve U.S. economic and political interests, and only secondarily to meet the needs of Iraq.

This suggests that we need to think of a lack of accountability as involving not only theft and fraud but also legal and political structures themselves, specifically those that effectively incorporate mechanisms of impunity. The veto power of the Permanent Five can operate as such a mechanism. Less obvious, but equally critical, is the lack of recourse to a judicial venue with independence and integrity, such as the ICJ, or the procedural decision to hold closed meetings, which effectively preclude public transparency or external political pressure. Yet all of these are in conformity with international law, the UN Charter, and the charter of the ICJ. In the case of the CPA, some of the improprieties involved violations of CPA regulations. But in some cases it was the CPA regulations themselves—properly promulgated in accordance with applicable Security Council resolutions—that explicitly mandated

that Iraqi funds would be spent in accordance with political priorities, not the needs of the Iraqi economy.

Abuses can also occur on a much subtler level. Within the bureaucratic process for the approval of humanitarian goods under the Oil-for-Food program, the consensus-based process meant that each member of the Security Council could decide whether to block goods for "dual-use" reasons. This procedure effectively allowed the most restrictive view to determine what goods arrived in Iraq. A set of legal questions are implicitly involved, including how to interpret the language of Security Council resolutions, what could legitimately be authorized under the UN Charter, and how to resolve the Charter's conflicting mandates of security and development. Yet these legal questions were resolved in the political process through the exercise of veto power, rather than through judicial review, or any other process with any intellectual integrity. A properly constituted body, acting in accordance with established procedures, perpetrated a terrible wrong.

In looking at the economic decisions affecting the Iraqi population, what were clearly needed were mechanisms of accountability at many levels: in the interpretation of legal provisions; in the monitoring and review of humanitarian decisions by independent humanitarian experts; in the case of the CPA, structures not only of transparency but also of enforcement; in the case of the Oil-for-Food program, oversight structures that were more systematic and less politicized. If there are lessons to be learned, they are obvious ones: that transparency is critical to accountability, but transparency alone, without external enforcement is not enough; that self-dealing, being a judge in one's own cause, is a powerful way to ensure corruption.

Contributors

Joy Gordon is Associate Professor in the Philosophy Department at Fairfield University. Her work focuses on human and economic rights, particularly economic sanctions. Her writings have appeared in *Harper's Magazine*, *Le Monde Diplomatique*, *Yale Journal of Development and Human Rights Law*, and *The Nation*. She is currently completing a book on the Iraq sanctions for Harvard University Press. She holds a Ph.D. in philosophy from Yale University and a J.D. from Boston University School of Law.

Jens Meierhenrich is Assistant Professor of government and of social studies at Harvard University, and Faculty Associate of the Weatherhead Center for International Affairs. He recently served as the Carlo Schmid Fellow in Trial Chamber II of the International Criminal Tribunal for the Former Yugoslavia, and has previously worked with Luis Moreno-Ocampo, the Chief Prosecutor of the International Criminal Court. He is the author of several forthcoming books on genocide and of a series of articles on comparative and international law and politics. His research has been supported by the U.S. Holocaust Memorial Museum, the Social Science Research Council, and the American Bar Foundation.

Margaret Moore is Professor in the Political Studies Department at Queen's University, Canada. She is the author of *Foundations of Liberalism* (1993), *The Ethics of Nationalism* (2001), and the coeditor, with Allen Buchanan, of *States, Nations and Borders: The Ethics of Making Boundaries* (2003). She is working on identity politics and global justice theory.

Kenneth A. Rodman is the William R. Cotter Distinguished Teaching Professor of Government and the Director of the Oak Institute for the Study of International Human Rights at Colby College. He is the author of *Sanctity Versus Sovereignty: The United States and the Nationalization of Natural Resource Investments* (1988) and *Sanctions Beyond Borders: Multinational Corporations and U.S. Economic Statecraft* (2001). His earlier work on economic sanctions has appeared in *International Organization*, *Political Science Quarterly*, and *Ethics & International Affairs*. He is currently working on a project on the relationship between justice and negotiation strategies in international conflicts.

Leif Wenar is Professor of philosophy at the University of Sheffield. In 2004–05 he was the Fellow of the program Justice and the World Economy at the Carnegie Council. His work has appeared in *Ethics*, *Philosophy & Public Affairs*, *Mind*, *Analysis*, *Politics, Philosophy and Economics*, *Columbia Law Review*, and *Philosopher's Annual*. He received his bachelor's degree from Stanford and his doctorate from Harvard.