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When Unilateralism Is Invisible: A Different Perspective on the Oil-for-Food Scandal



Joy Gordon

The United States has long had an ambivalent relation to multilateralism. This has been particularly evident in the claims made by the United States against the United Nations regarding the oil-for-food program. These accusations maintained that the UN has been corrupt and incompetent, and that the lack of accountability allowed Saddam Hussein to engage in extensive smuggling and kickbacks. Some of these claims turned out to be well grounded, but many were not. There was, in fact, an elaborate structure of monitoring and transparency for the program. Many of the claims made against “the United Nations” actually concerned decisions by the Security Council and its members, including the United States and the UK, not the Secretariat or the UN agencies. **KEYWORDS:** multilateralism, oil-for-food program (OFFP), accountability, Office of the Iraq Programme, Iraq.

The United States has long had an ambivalent relation to multilateralism. There is the longstanding US criticism of multilateralism as ineffectual, a view sometimes echoed even by the EU—Javier Solana has spoken of the tension between “militant unilateralism” and “feel-good multilateralism.”¹ On one hand, as many have noted,² the United States has been a leader in the major institutions of liberal internationalism: Woodrow Wilson’s support of the League of Nations, Roosevelt’s leadership in the formation of the United Nations. Yet the actual policies of the United States and its practices in regard to multilateralism have been far more tentative. Madeline Albright phrased it, “We will act multilaterally when we can and unilaterally when we must;” which has sometimes turned out to be: we will act multilaterally when others agree with our agenda, and we will act unilaterally when they don’t.

This ambivalence is particularly evident when the multilateral involvements concern not just alliances for collective security or economic self-interest, but a commitment to broader principles of international stability and long-term collective interest, as Ruggie has articulated in his conception of multilateralism. John Ruggie’s view, in contrast to Robert Keohane’s, holds that multilateralism involves not just coordinated blocs of mutually self-interested nations, but adherence to generalized principles,

indivisibility, and nondiscriminatory treatment, rather than exclusive and discriminatory alliances.³ Multilateralism is a “demanding organizational form,” Ruggie suggests, in that it requires nations “to renounce temporary advantages and the temptation to define their interest in terms of narrow national self-interest, situational exigencies, and momentary constellations of interests.”⁴ At the same time, multilateralism provides greater credibility and moral legitimacy and, in the cases of treaties and certain international bodies, such as the Security Council, carries the weight of international law as well.

It is this approach to multilateralism that the United States has particularly resisted. Within the major institutions of global governance, the United States has participated only on advantageous terms—as a veto-bearing permanent member of the Security Council, or with weighted voting on the IMF board. Conversely, we saw the refusal of the United States to sign on to the Rome Statute of the International Criminal Court in the absence of a process that would effectively provide US nationals with immunity from prosecution. In other major multilateral initiatives, the history has been similar. As Steven Holloway notes, it took the United States forty years to ratify the Genocide Convention; twenty-eight years for the Convention Against Racial Discrimination; and twenty-six years for the International Covenant on Civil and Political Rights. In Holloway’s study of US voting patterns within the UN’s General Assembly, the United States has the most extreme record of “rejectionist” voting—voting in the minority on resolutions passed by the Assembly. Indeed, the United States took much more extreme stances than even its closest NATO allies.⁵

The structures of international governance, on one hand, offer credibility and legitimacy and, since the end of the Cold War, also offer venues in which the United States can pursue its agendas unimpeded by the intervention of another superpower. This was to a large extent the case with the oil-for-food program (OFFP), in which the United States held a singular role in determining many aspects of the Iraq sanctions regime—for example, in the leadership and control of the Multinational Interception Force, as well as in providing agreement and support to the other aspects of the program that were adopted—such as the decision to permit Iraq to choose its trade partners under the OFFP. While multilateralism is envisioned to provide both legitimacy and broader viability as a result of international participation, in the case of the OFFP, multilateralism—or at least the formal structure of it—functioned in another way as well: it obscured the role of the five permanent members of the Security Council (P5), the nations that dominated the program’s design and operation, in particular the role of the United States.

Ironically, the most vehement accusations against the UN regarding the OFFP have come from the United States, and these accusations have been terribly damaging, involving attacks on Kofi Annan himself, as well as on the institutional viability of the United Nations as a whole.

This article looks at the OFFP, and the accusations against it, as an illustration of the ways that a structure of international governance can on its face be the product of a multilateral process, while in fact being deeply shaped by a unilateralist agenda.

The Accusations Against the Oil-for-Food Program

Since 2004 there has been an explosion of accusations against the United Nations, alleging corruption and incompetence in the operation of the OFFP, the program established by the Security Council that allowed Iraq to export oil and use those funds to import critical humanitarian goods. There have been over a dozen sets of congressional hearings; a series of Government Accountability Office (GAO) reports; an independent commission headed by Paul Volcker; and something resembling a feeding frenzy on the part of conservative journalists. One of the most virulent of the critics went so far as to write that “it’s looking more and more as if one of the best reasons to get rid of Saddam Hussein was that it was probably the only way to get rid of Oil-for-Food.”⁶

The actual work and history of the program have been framed as a failure of accountability and integrity, and as emblematic of the UN’s general capacity to function effectively. But the condemnations of the program often confuse a number of distinct issues, attribute blame where it does not seem at all warranted, and, to a significant degree, obscure the central role of the United States in approving many of the procedures and transactions now criticized by US agencies and members of Congress.

The Structure of Accountability

In the press, and in congressional testimony, it has been common to see assertions such as those of Rep. Christopher Shays, who claimed in congressional hearings that the OFFP “trust[ed] Saddam Hussein to exercise sovereign control over billions of dollars of oil sales and commodity purchase,”⁷ even though Saddam Hussein had control over almost nothing in the program. The sanctions regime and the OFFP, in fact, were designed with extraordinary measures of accountability, precisely to restrict Saddam Hussein’s access to funds or goods.

The OFFP was established by Security Council Resolution 986 (1995). It was housed within the Office of the Iraq Programme (OIP), an entity within the Secretariat that coordinated the work of all the UN agencies present in Iraq, and which also operated the OFFP. Although the program has been accused of being secretive,⁸ that was not the case. From its inception,

OIP maintained a website that contained the lists for each six-month phase of the program of every single item that Iraq had been given permission to import.⁹ Although OIP did not list information about each individual contract, it continually posted information regarding every week's oil activities,¹⁰ as well as information on all contracts for humanitarian imports in every sector of Iraq's economy and society—agriculture, education, health care, construction, transportation, electricity, and so forth.¹¹ Each ninety days the secretary-general posted a report on the OIP website providing considerable detail about every aspect of the program and the situation in Iraq: the oil sales, the condition of the oil industry, the problems and goals for oil exports, the availability of health care, the delivery of medical supplies, the monitoring reports regarding the distribution and use of medical supplies, the demining operations, observation and monitoring reports, the status of the infrastructure, and so on.¹² OIP also issued weekly updates that provided current information on oil liftings, release of contracts on hold, particular problems or their resolution, changes in the program or the procedures, and so on.¹³ In addition, the website posted all Security Council resolutions and other basic documents related to the program, UN reports and presentations, documents outlining the program's procedures, and a detailed chronology of the program's history.¹⁴

Although the UN has repeatedly been charged with a failure to provide oversight, in fact the program had elaborate systems of oversight and accountability built into its structure—for Iraq's imports, Iraq's oil exports, and the handling of funds. The OFFP operated in six-month phases and, for each phase, Iraq was required first to submit a proposed distribution plan. The distribution plan listed literally every single item Iraq wished to purchase, for every sector, and specified its use. UN program staff, with input from the UN specialized agencies (UN Children's Fund [UNICEF], UN Educational, Scientific and Cultural Organization [UNESCO], World Health Organization [WHO], and others), then reviewed the plan to ensure that the goods conformed to the approved humanitarian purposes. Once the distribution plan was approved (or modified and then approved) the government of Iraq could then begin the process of contracting with vendors.

Its trading partners were the *only* thing Iraq could choose freely; even then, each contract was subject to multiple levels of scrutiny. The UN Special Commission (UNSCOM) and, later, UN Monitoring, Verification and Inspection Committee (UNMOVIC), reviewed the contract to determine if there were any goods on the "1051 list," the list of goods identified in Security Council Resolution 1051 that were of concern in regard to military or weapons of mass destruction uses. The contract was also circulated to all members of the "661 Committee," the committee of the Security Council charged with implementing the sanctions regime and overseeing the OFFP. The committee had fifteen members, mirroring the Council itself, and operated by consensus,

effectively giving every member veto power over every decision. Some goods that were widely viewed as unproblematic, such as food, were put on a “green list”—by the agreement of the 661 Committee—and could be approved by OIP without circulation to the committee members.¹⁵ However, the green list was quite narrow and the great majority of contracts continued to be circulated to the entire 661 Committee.

Once the contract was approved, the procedure for payment was structured such that no funds went directly through the hands of the Iraqi government. All the proceeds from oil sales were paid to the UN and went into an escrow account at the UN. All vendors, in turn, were paid directly from the escrow account. This account was one of the most heavily audited in the UN system; it underwent nearly one hundred audits.¹⁶

Once the goods were purchased, Lloyd’s Register (later Cotecna) monitored the arrival of the goods in Iraq. After the goods arrived in Iraq the UN agencies were actively involved in monitoring their distribution. Under Resolution 986, the UN agencies were responsible for monitoring the equity, efficiency, and adequacy of the distribution of goods in Iraq. Nine UN agencies were involved at the most detailed level. Among them, UNESCO monitored the needs related to education, as well as the distribution and use of materials imported for use in schools; WHO did the same for the medical sector; the UN Office for Project Services (UNOPS) for demining; the Food and Agriculture Organization (FAO) for agriculture; the UN Development Program (UNDP) for electricity; UNICEF for water and sanitation; and the UN Centre for Human Settlements (Habitat) for housing construction.

The Memorandum of Understanding¹⁷ that laid out the mechanics of the OFFP established an elaborate observation mechanism, involving hundreds of UN employees, who monitored everything from supply stocks in warehouses to spot checks at thousands of food distribution points. Each ninety days the secretary-general reported their findings—in considerable detail, including data for every sector of the Iraqi economy and social services—to the 661 Committee, as well as posting the reports publicly on the OIP website.¹⁸ For goods that were critical but also raised security concerns, there was an additional level of monitoring beyond the usual procedures. Chlorine, for example, can be used to produce chlorine gas, a prohibited weapon. But chlorine was also essential to treat water to make it safe for human consumption. For chlorine, the UN staff literally monitored and documented the movement of each canister of chlorine: its arrival in Iraq, its transport to the site of end use, its installation at the plant, and the disposal of the empty canister. There were comparable procedures for goods in agriculture, pharmaceutical production, medical equipment, and other sectors.

Similarly, all oil sales were subject to an elaborate system of scrutiny and prior approval. Under the terms of the program, as established by the Security

Council, the secretary-general retained experts from the oil industry to serve as “oil overseers.” All of these appointments were, in turn, approved by the 661 Committee. The oil overseers advised the 661 Committee on the condition of Iraq’s oil industry, the extent of the need for equipment and spare parts, and appropriate pricing and terms for the oil sales. The oil overseers themselves made no decisions. Rather, all oil sales required the approval of the 661 Committee, and their approval was required for all the terms of the sale, including the pricing.¹⁹

If Saddam Hussein’s government was able to skim funds from the OFFP, it was not because of a lack of oversight or accountability. Rather, it was in spite of the most elaborate structure of oversight imaginable.

Accusations of Corruption

The accusations regarding the OFFP are grounded in an April 2004 report of the GAO,²⁰ a 2004 report of the CIA’s Iraq Study Group (ISG), headed by Charles Duelfer,²¹ and a series of reports issued by the Independent Inquiry Committee, established by the secretary-general and headed by former Federal Reserve chairman Paul Volcker. The Volcker committee’s September 2005 report concludes after extensive investigation that oil surcharges totaling \$229 million were paid illicitly to the Iraqi government, and that there were kickbacks of various sorts. There was evidence of \$198 million paid in improper “after sales service fees,” and, on the basis of this figure, the committee estimated that there was another \$858 million for which there was no documented evidence. Finally, there was \$530 million illicitly paid to the Iraqi government in inland transportation fees.²² Thus, the total amount of illicit funds that the Iraqi government acquired involving the OFFP processes was \$1.8 billion. In addition, the Volcker committee estimates that Iraq obtained approximately \$11 billion in income from smuggling over the entire period of the sanctions from 1990 to 2003.²³

The Volcker committee’s reports raised a number of criticisms, some of them involving matters central to the program, some involving marginal issues. Enormous attention was paid to the question of whether Kofi Annan’s son, Kojo Annan, used his or his father’s influence to see that an inspection contract was awarded to Cotecna, a company for which Kojo Annan had worked. Yet within the context of the program as a whole this was a minor issue: it involved money from a very small pool of funds within the program (the 2.2 percent account); there has been no suggestion that Cotecna was unqualified to receive the contract, or that it did not perform its obligations under the contract. Cotecna was also the lowest bidder for the contract. Thus, even if there were an improper use of influence, no negative consequences for the program resulted, either in funds spent or tasks performed.

The Volcker committee also brought accusations against personnel from the OIP. The most serious of these is an accusation that Benon Sevan, the director of the OFFP, personally received oil vouchers from the government of Iraq that could be sold. This accusation, if true, would constitute at least a conflict of interest, and arguably fraud. However, it is not clear that the program management was affected. The final Volcker committee report charges Sevan with lapses in oversight, including the failure to adequately investigate the kickbacks once he heard rumors of them, and, instead, requiring formal complaints, and failing to hire adequate personnel to staff a more robust oversight process.²⁴ However, it is not clear that this had an impact on the program's operations. In fact, Sevan's staff notified the Security Council's 661 Committee, charged with overseeing the Iraq sanctions, on more than seventy occasions when there were contracts with irregular pricing, indicating the likelihood of kickbacks, and the committee's members did not act to cancel those contracts.

Other reports of the Volcker committee criticized the United Nations for failing to audit the contracts for oil sales and for imports of humanitarian goods, and maintained that had this been done, the kickbacks, which came to 5–10 percent, might have been discovered.²⁵

What the Volcker reports do not address adequately is that the OFFP was explicitly the product of a political process. It was, very explicitly, created and implemented according to the terms of Security Council resolutions, passed under the authority of Chapter VII of the Charter, and as such, neither the secretary-general nor any other entity within the United Nations had the power to revise or override the structure set in place. What this meant in practice is that the program was not designed in a process of coherent planning, guided by any precepts normally applicable to programs of the United Nations. Instead, it was deeply shaped by the lobbying, negotiations, leverage, and compromises of the members of the Council, especially the permanent members, in accord with economic interests, ideological agendas, public pressure, and the like. The final report of the Volcker committee faults the secretary-general for being "unable to deal effectively with political pressures."²⁶ But that suggests there was more room for intervention and decisionmaking on the part of the Secretariat than was the case. The Secretariat was authorized only to implement the program in accordance with the terms of the Security Council resolutions and had no authority to make decisions about the operation of the program, in almost any regard, without the approval of the Security Council. Where the secretary-general was charged with executing particular aspects, such as awarding contracts in conjunction with the tasks performed by the UN (contracts for oil consultants, banking, and inspection of goods), there was explicit intervention by the permanent members to veto or lobby for particular choices.²⁷ In the end, many of the failures of oversight and policy decisions that permitted the smuggling and

kickbacks to occur are not attributable to the Secretariat or the UN's internal agencies, but rather to the decisions and failures of the member states sitting on the Security Council, including the United States.

Oil Smuggling

The GAO report of April 2004 estimates that Iraq smuggled out \$5.7 billion in oil from 1997 to 2002, much of it by ship. Security Council Resolution (SCR) 665 (1990) called upon member states with naval forces in the area to intervene to enforce the sanctions. The result was the establishment of the Multinational Interception Force (MIF). The MIF involved some participation, at various points, from twenty or so different nations. But it was overwhelmingly dominated by US naval forces and ships. The commanders at every point in MIF's history were US naval rear admirals or vice admirals.²⁸ In 2000, for example, the US contributed eighty-six vessels; the UK seven vessels; Canada one vessel for two months; and the Netherlands one vessel for one month.²⁹

According to its reports, the MIF was quite active, boarding hundreds of ships each year,³⁰ and there is no reason to suggest that it was incompetent or poorly run. However, it makes little sense to blame the UN for failing to stop Iraq's illicit oil smuggling. There was no authorization for any UN entity to take actions to intervene; SCR 665 only invited member states to take these measures. It seems rather disingenuous for the US to accuse the UN of incompetence and corruption for failing to stop the smuggling, when the MIF consisted primarily of US naval forces and was at all times under the direction of US naval officers.

The 661 Committee did have a related role. The commanders of MIF presented annual reports to the committee on its general activities. When there were specific claims of sanctions violations, the role of the 661 Committee was to contact the nations involved to remind them of their obligations to comply. Those responsibilities fell solely on the member states, not the Secretariat or other agencies within the UN.

The "Secret Oil Voucher System"

The ISG report made much of what it described as Iraq's "secret oil voucher system," which entitled individuals or companies to purchase oil from Iraq. According to the report, Iraq's Ministry of Oil controlled the distribution of the "clandestine oil allocation vouchers," and Saddam Hussein personally approved or removed names from the list.³¹ The oil voucher system, the report maintains, allowed Iraq to exert influence and reward nations and

organizations that joined Iraq in seeking to subvert the sanctions.³² The ISG report states, “During Iraq’s negotiations with the UN concerning the Oil for Food program, Baghdad fought hard for the right to determine to whom it could sell its oil and Baghdad considered the UN’s concession on this point an important victory.”³³

But it was not a failure of oversight on the part of the OFFP that allowed Iraq to choose who it would sell oil to. Under the terms of the program, as designed and approved by the Security Council, Iraq was permitted to contract with purchasers of its choice, subject to close monitoring of the pricing and other terms by the oil overseers on the UN staff, and subject to approval by the 661 Committee. While the ISG report notes briefly that “some Iraqi trade was legal and legitimate under the Oil for Food Program,”³⁴ that seems to be something of an understatement. The list of some 248 companies that bought oil from Iraq through the OFFP is nearly identical with the list of voucher recipients.³⁵ This would suggest that the voucher system was little more than simply the Iraqi government’s method of keeping track of who it selected as its purchasers within the program. It was not improper or illegal for Iraq to select its oil purchasers.³⁶ Whether Iraq used a voucher system or some other method to identify its buyers, it was entitled to do so under the terms of Security Council Resolution 986, and the Memorandum of Understanding (MoU) that—with the approval of the Security Council members, including the United States—laid out the mechanics of the OFFP.³⁷ Furthermore, even if the voucher system was indeed “secret,” the actual oil sales certainly were not. Each of the oil sales was subject to the scrutiny of both the UN staff and the Security Council members, and required the approval of every member of the Security Council, including the United States. This included the prices—whatever the Iraqi government may have offered, it could not offer unusually low prices or lucrative purchasing opportunities without having the prices scrutinized and approved by every member of the Security Council, including the United States and the UK.

Whether or not the use of vouchers was public and whether or not the UN monitored their use or not, the use of vouchers simply does not appear to be illicit.

Government-to-Government Protocols

Both the Volcker report and the ISG report maintained that the majority of illicit funds that went into the hands of the Saddam Hussein regime did not come through the OFFP, but through agreements for ongoing illicit trade with other nations outside the program. These “protocol agreements” came to some \$8 billion, while illicit funds through the OFFP amounted to a total

of less than \$2 billion.³⁸ Of these agreements, by far the largest involved Jordan. The report estimates that earnings from Iraq's illicit trade with Jordan totaled \$4.4 billion over the course of the sanctions. The Jordan agreement was particularly valuable in the first years of the sanctions: "The protocol with Jordan ensured the regime's financial survival until the UN Oil for Food Program began in December 1996."³⁹ The Security Council was quite aware of Jordan's illicit trade. In May 1991, the Security Council sanctions committee "took note" of Jordan's illegal trade with Iraq—and did nothing to interfere, then or at any point in the next twelve years.⁴⁰ Similarly, Turkey was one of Iraq's major illicit trade partners, with Iraq's earnings totaling \$710 million.⁴¹ But while the United States had introduced the comprehensive sanctions on Iraq in August 1990, and lobbied aggressively for their adoption, it took a different posture with regard to Jordan and Turkey, both of which were critical allies. Even though it was the responsibility of the 661 Committee to address sanctions violators, the committee could not take any measures without unanimous agreement, and neither the Security Council nor 661 Committee could have acted in contravention of the will of the United States.

Oil Surcharges

In the latter part of 2000, Iraq began using a different structure in its contracts with oil purchasers. The contract holders began demanding a "premia"⁴² (essentially the profit that goes to the contractor when he resells the oil to refiners) ranging from 5 cents per barrel to 50 cents per barrel.⁴³ The UN's oil overseers considered that to be above the industry standard and informed the 661 Committee that it was likely that Iraq was using this margin to receive income under the table from oil purchasers.

In October 2001, in response to the oil overseers' concern, the United States and the UK "made creative use of the consensus rule," in the words of a US diplomat,⁴⁴ by implementing a "retroactive pricing policy."⁴⁵ The normal practice in the industry, and for the OFFP, was to set the price for the coming month. Under retroactive pricing, the United States and the UK withheld their approval for the price until the month had passed. This meant that buyers literally were required to sign contracts for oil purchases without knowing what the price was until after they had committed. The United States and the UK claimed that this allowed the committee to determine retroactively what the fair market value of the oil had been the previous month, and charge buyers accordingly.⁴⁶ Thus, the argument went, Iraq was receiving no more nor less than fair market value; that eliminated the premia that went to middlemen and consequently eliminated the possibility that the middlemen would pay Iraq illicit surcharges.

The new pricing policies did eliminate any margin for surcharges. But it had another result as well: oil sales were substantially compromised. Predictably, few buyers were prepared to purchase Iraqi oil without knowing the price. It did not help much to provide assurances that the price they were ultimately charged would be “fair market value,” as determined by the 661 Committee. “Fair market value” is not a set figure. Rather, it involves a complex (and somewhat arbitrary) determination about the relative profits of the buyers, in light of geography, logistics, and other factors.⁴⁷

Consequently, a buyer would have to guess what the 661 Committee would consider—in the future—the relative profitability of Iraqi oil to the buyers one month earlier. Buyers had to gamble that the price eventually approved by the 661 Committee—determining unilaterally what “fair market value” had been a month earlier—would not turn out to be a financial disaster for them. The effect was to make the purchase of Iraqi oil commercially unfeasible; few buyers were willing to commit themselves to contracts where the sale price was unknown, when oil from other sources in the market was available under normal commercial procedures, with a price stated up front.

It was no surprise when oil sales in the OFFP collapsed. The oil overseers explicitly explained the trade-off to the 661 Committee:

Any attempt to reduce excessive premia can only lead to lower crude exports and, therefore, less income to the United Nations-Iraq account. The more effective the measures taken by the Committee are, the more export levels will then be reduced . . . Until the contract-holders reduce their demands for high premia, any decision taken by the Committee . . . should, therefore, be considered essentially a choice between the level of crude oil exports from Iraq and the revenue level under the Programme.⁴⁸

Iraq itself took some measures that affected oil sales for periods of a few weeks at a time. In June 2001 Iraq stopped producing oil in protest against a US proposal to modify the sanctions regime, and in April 2002 Iraq again declared a moratorium to protest against Israel’s treatment of Palestinians. However, the retroactive pricing mechanism was by far the major factor in the financial crisis of the OFFP from 2001–2003. In 2001, oil exports averaged 1.7 million barrels per day. In 2002, the average was 1.1 million barrels per day (BPD). By September 2002, that number had dropped to 400,000 BPD.⁴⁹

The result was a dramatic shortfall in funding for humanitarian contracts. In February 2002, Sevan reported that there were nearly seven hundred contracts, with a value of \$1.6 billion, waiting to be funded. If all holds were lifted—at that point totaling \$5.3 billion—there would be a shortfall of \$6.9 billion.⁵⁰ In May 2002, Sevan reported that the retroactive pricing, in combination with demands for high premia, had resulted in a loss to the program

of \$1.2 billion in the prior six months. He recommended canceling nearly \$2 billion in contracts that had been approved over a year earlier, or were waiting for letters for credit, since it was unlikely there would be funding to pay for them.⁵¹ By 2002 the funds for a six-month period were spent before the period was half over. One member of the 661 Committee noted that “exports are now so low that the program is on the verge of collapsing.”⁵²

The retroactive pricing was successful in its stated purpose. By spring of 2002, the oil premiums had dropped to 3–5 cents per barrel, which meant that there was no margin out of which Iraq could receive any illicit surcharges.⁵³ However, once the surcharges had stopped—indeed, were no longer possible—the United States and the UK nevertheless refused to allow the OFFP to return to normal commercial pricing. By invoking the consensus rule, the United States and the UK forced the retroactive pricing to continue until March 2003,⁵⁴ when the United States and its coalition partners took military action against Iraq.

A Bush administration official, during hearings on the oil-for-food scandal, bragged that the retroactive pricing policy meant that “for at least the final eighteen months of the program we were able to save the people of Iraq significant sums of money in illegal oil surcharges,”⁵⁵ with estimates in the hundreds of millions of dollars. What he did not say was that while the United States and the UK were successful in stopping the illicit surcharges, that did not benefit the Iraqi people. Quite the opposite—while the pricing scheme prevented perhaps millions of dollars from arriving in the hands of the Iraqi government, the net effect was that there were no funds available to pay for several billion dollars in humanitarian goods that were essential for human welfare, including equipment for water and sewage treatment, transportation, communication, and the generation of electricity.

Import Contracts

In the summer of 2003, Iraqi ministry officials told interviewers from the Coalition Provisional Authority (CPA) that they had been instructed to inflate contracts for the purchase of goods under the OFFP by 10 percent.⁵⁶ The overage was then returned to the government of Iraq illicitly. A study by the Defense Contract Audit Agency of several hundred contracts found that about half were reasonably priced, and about half were “potentially overpriced,” meaning that the price exceeded the contract value by 5 percent or more.⁵⁷

Critics maintain that “the UN” should be considered corrupt and incompetent for its failure to prevent these kickbacks from occurring. The GAO report says that “while OIP was to examine each contract for price and

value, it is unclear how it performed this function . . . The sanctions committee responded to illegal surcharges on oil, but it is unclear what actions it took to respond to commissions on commodity contracts.”⁵⁸ In fact it does not appear that there was any concern about this even on the part of the United States, the nation that was the most aggressive in seeking to restrict Saddam Hussein’s access to goods and funds. The United States did, on occasion, accuse Iraq of padding the contract prices, but it offered no evidence or information that the Security Council could act on.⁵⁹ Nor were increases of 5–10 percent particularly obvious. It was not possible to identify the surcharge from the contract documents themselves, according to the testimony of the Defense Contract Audit Agency.⁶⁰

When there were obvious pricing irregularities, clearly allowing for kickbacks, the OIP contacted the vendor for an explanation. If the explanation was not satisfactory, the OIP then presented the documentation to the 661 Committee, giving all of its members the opportunity to block contracts where kickbacks were likely to occur. In over seventy cases, the OIP gave the committee this information, giving each member the opportunity to veto the contract. In none of these cases did the United States choose to do so.⁶¹

The US government employed sixty technical experts to review the contracts,⁶² far more than any other nation on the Council. But according to US officials there was little interest—on the part of the United States—in the pricing of the humanitarian contracts. Ambassador Patrick Kennedy testified that the “preoccupation” of the US mission to the UN was with preventing any goods from entering Iraq that could be used for military purposes, particularly weapons of mass destruction.⁶³ But that concern did not extend to preventing kickbacks. John Ruggie, the assistant secretary-general of the UN charged with relations with the US Mission, noted that “OFF approved 36,000 contracts over the life of the program. Every member had the right to hold up contracts if they detected irregularities. The US and UK were by far most vigilant. Yet as best as I can determine, not a single one was ever held up by any member because of pricing.”⁶⁴

Conclusion

Throughout the congressional hearings, in the media coverage, and in the various investigatory reports, the UN is treated as a unified entity,⁶⁵ its failures reflecting directly on the leadership of the secretary-general. Thus, “the UN” showed weakness in giving in to Saddam’s pressure and creating the OFFP; “the UN” gave Saddam sovereign control over billions of dollars; “the UN” is corrupt for accepting bribes from the Iraqi government; and “the UN” is incompetent if not complicit for allowing Saddam to smuggle oil and skim money from the oil sales and humanitarian imports.

Yet that is a very distorted view of the United Nations, and a very distorted view of how decisions were made, and who made them. In this case, the perception of multilateralism obscures the underlying political reality: that the critical decisions concerning the basic terms and operation of the program were made within the Security Council, and, within that process, the United States held a position of extraordinary influence. The veto power of the United States, both within the Security Council and the 661 Committee, unilaterally determined the extent to which critical humanitarian goods would be blocked. Where the UN is faulted for failing to stop contracts with kickbacks, it was the United States along with the other members of the Security Council who chose to allow the contracts through. Where the UN is faulted for failing to interdict smuggling, the underlying reality is that the maritime interdiction force was almost entirely an operation of the US Fifth Fleet.

Neither the Secretariat nor any other entity within the UN has the power to overrule the decisions of the Security Council (or presumably one of its committees, such as the 661 Committee).⁶⁶ It was the decision of the Security Council to establish the OFFP. All of the program's conditions and terms—which included allowing Iraq to select its own vendors and purchasers—took place by decision of the Council's members, not as an oversight or error of judgment on the part of Kofi Annan. The Office of the Iraq Programme, which was housed within the Secretariat, could operate only within the mandate given it by the Security Council. And it did so. It was UN staff—the oil overseers—who brought Iraq's pricing manipulations in oil sales to the attention of the 661 Committee. OIP notified the Security Council members of pricing irregularities, but OIP was not mandated to block contracts; the members of the Security Council were. While OIP can be held accountable for executing its mandate, it cannot legitimately be criticized for failing to take measures that were outside that mandate. Likewise, "the UN" was not mandated to interdict smuggling. That was a responsibility of the member states. The question of whether they did the job well or poorly, or whether they chose to overlook some forms of illicit trade and pursue others, does not constitute institutional failure on the part of the United Nations, but rather reflects on the political exigencies and other interests of the individual member states.

What is clear is that these accusations have done enormous damage to the credibility of the United Nations as a whole. We witnessed the ill-fated decision to invade Iraq without Security Council authorization; we might recall that the Security Council would not grant the US demand to authorize an invasion, precisely because the United States was unable to provide any compelling evidence that Iraq had weapons of mass destruction. Genuine multilateralism—as distinct from the unilateral shaping of the policies of international governance—is as badly needed as ever. If the world's most

respected institution of international governance is rendered impotent by these accusations, we should all fear the consequences. 🌐

Notes

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1. Javier Solana, "Rules with Teeth: The Iraq Crisis Reveals the Need for a Better Approach than Either Militant Unilateralism or Feel-Good Multilateralism," *Foreign Policy*, September–October 2004, no 144, p. 74.

2. See, for example, Marc F. Plattner, "Two Kinds of Internationalism," *The National Interest*, Spring 2005, no. 79, p. 84.

3. John Ruggie, "Third Try at World Order? American and Multilateralism after the Cold War," *Political Science Quarterly* 109, no. 4 (1994): 556.

4. James A. Caporaso, "International Relations Theory and Multilateralism: The Search for Foundations," in John G. Ruggie, ed., *Multilateralism Matters: The Theory and Praxis of an Institutional Form* (New York: Columbia University Press, 1993), p. 56.

5. Steven Holloway, "US Unilateralism at the UN: Why Great Powers Do Not Make Great Multilateralists," *Global Governance* 6, no. 3 (July–September 2000): 369.

6. Claudia Rosett, "Oil-for-Terror," *Wall Street Journal*, 28 April 2004.

7. Statement of Rep. Christopher Shays, House Committee on Government Reform, Subcommittee on National Security, Emerging Threats, and International Relations, *The Iraq Oil-for-Food Program: Starving for Accountability*, 108th Cong., 2d sess., 21 April 2004, p. 1.

8. See, for example, Rosett's testimony, maintaining that "the hallmarks of Oil-for-Food were: 1) Privilege 2) Secrecy. These are features usually associated . . . with . . . secret societies, closed systems, dictatorships." Statement for the Record of Claudia Rosett, House Committee on Government Reform, Subcommittee on National Security, Emerging Threats, and International Relations, *The Iraq Oil-for-Food Program: Starving for Accountability*, 108th Cong., 2d sess., 21 April 2004, p. 3.

9. Available at www.un.org/Depts/oip/dp/index.html.

10. Available at www.un.org/Depts/oip/background/oilexports.html.

11. Available at www.un.org/Depts/oip/background/basicfigures2.html.

12. Available at www.un.org/Depts/oip/background/reportsindex.html.

13. Available at www.un.org/Depts/oip/background/latestindex.html.

14. Available at www.un.org/Depts/oip/background/scrsindex.html, www.un.org/Depts/oip/background/fact-sheet.html, and www.un.org/Depts/oip/background/chron.html.

15. This was authorized under Security Council Res. 1409 (2002).

16. See www.un.org/Depts/oip/background/latest/backgroundnoteandans030425.html to see the number of audits that were done.

17. S/1996/356, 20 May 1996.

18. See www.un.org/Depts/oip/background/reportsindex.html.

19. "Procedures to be employed by the Security Council committee established by Resolution 661 (1990) concerning the situation between Iraq and Kuwait in the discharge of its responsibilities as required by paragraph 12 Security Council Resolution 986" (1995) (S/1996/636), 12 August 1996.

20. "United Nations: Observations on the Oil for Food Program," Statement of Joseph A. Christoff, Director, International Affairs and Trade. Testimony before the Committee on Foreign Relations, U.S. Senate. GAO-04-65IT.

21. "Comprehensive Report of the Special Advisor to the DCI on Iraq's WMD," 30 September 2004, available at www.cia.gov/cia/reports/iraq_wmd_2004/index.html.

22. "The Management of the United Nations Oil-for-Food Programme," Independent Inquiry Committee, 7 September 2005, Vol. I, pp. 85, 91.

23. *Ibid.*, p. 95.

24. *Ibid.*, p. 70–71.

25. Joy Gordon, "The United Nations and Oil-for-Food: The Facts Behind the Volcker Commission's Interim Report," *UNA-USA Policy Brief*, no. 5, February 2005.

26. "The Management of the United Nations Oil-for-Food Programme," Independent Inquiry Committee, 7 September 2005, Vol. I, p.61.

27. "Interim Report," Independent Inquiry Committee into the United Nations Oil-for-Food Programme, 3 February 2005.

28. The commanders of the MIF were Rear Admiral A.K. Taylor (1991–1992); Vice Admiral D.J. Katz (1992–1994); Vice Admiral J.S. Redd (1994–1996); Vice Admiral T.B. Fargo (1996–1998); Vice Admiral C.W. Moore Jr. (1998–2002); and Vice Admiral T.J. Keating (2002–2003).

29. In 2001, the United States contributed ninety vessels, the UK contributed four, and all other participating countries contributed one or two. In 2002, the United States contributed ninety-nine vessels, five nations contributed ten or more, and several other countries contributed less than ten. "Department of State Request for Information: Yearly Snapshot of the Maritime Interception Force/Multinational Force," US Navy Central Command, on file with author.

30. From 1994 to 2001, there were several hundred boardings per year; in 2002 and 2003, there were over 3,000 boardings per year. "Department of State Request for Information: Yearly Snapshot of the Maritime Interception Force/Multinational Force," US Navy Central Command, on file with author.

31. Charles Duelfer "Comprehensive Report of the Special Advisor to the DCI on Iraq's WMD," 30 September 2004, Regime Finance and Procurement Section, p. 4–5.

32. *Ibid.*, p. 19.

33. *Ibid.*, p. 34.

34. *Ibid.*, p. 1.

35. Judith Miller, "Panel Leader Says Inquiry Into U.N. Program Is Slowed," *New York Times*, 22 October 2004, p. A11.

36. Although the ISG report repeatedly asserts that the voucher program allowed Iraq to manipulate the sanctions regime for political purposes, it offers very little grounds to suggest that the voucher system was actually illegal or in violation of the program's conditions. The ISG report speculates that certain scenarios might have taken place and, if so, then they were arguably illegal. If an intermediary received a voucher, and sold this entitlement to an oil company, then there could be a third party who profited from the sale who had not been approved by the OFFP. Thus, the report speculates, some individuals or political organizations might have received proceeds from the oil allocations. However, the report then notes that "ISG has no direct evidence linking these individuals or political organizations to actually receiving the proceeds from these oil allocations." Duelfer, "Comprehensive Report," p. 34.

37. Security Council Res. 986 (1995) and "Memorandum of understanding between the Secretariat of the United Nations and the Government of Iraq on the implementation of Security Council Res. 986 (1995)," S/1996/356.

38. The report says that kickbacks on import contracts totaled \$1.5 billion, and surcharges from oil sales came to \$229 million. Additionally, private sector border trade was about \$1.2 billion. Duelfer, "Comprehensive Report," p. 23.

39. Duelfer, "Comprehensive Report," p. 24.

40. It was so widely known that the trade accords were reported in industry periodicals. For the extraordinary amount of detailed information that was publicly available, see, for example, the following:

Jan. 4, 1997. Senior Jordanian and Iraqi officials aided by technical experts are now busy working on details of renewing an oil agreement between the two countries. The agreement, under which Iraq is expected to increase by 7% its oil supplies to Jordan, will be signed when Minister of Industry and Trade Ali Abul Ragheb visits Baghdad. At this moment technical experts from the two sides are working on the details. Abul Ragheb is scheduled to visit Baghdad for a meeting of the Joint Jordanian-Iraqi Economic Commission on January 6. During the visit, Jordan and Iraq are also expected to renew their annual trade protocol, which is tied with the oil agreement. Under the proposed agreement, Iraq will provide Jordan 4.5 mmt of crude oil and oil products in 1997. Since the end of the gulf war, Iraq has been meeting Jordan's oil needs by trucking 50,000 bpd of crude oil and 20,000 to 25,000 bpd of fuel oil to the country's only refinery at Zarqa. But Baghdad now owes Jordan \$1.3 bn, representing debts accumulated in the 1980s as well as the unsettled payment of part of the Jordanian exports to Iraq. In 1996, Jordan cut the annual trade protocol by about half to \$220 mm. Officials have said that the amount is unlikely to be increased in 1997. Issues related to the outstanding Iraqi debts to Jordan and replacement of the present trucking system to pump Iraqi oil to Zarqa by the 500-kilometre pipeline are also expected to be discussed during the talks of Dabbas and Awad with Baghdad officials.

"Jordan to Renew Oil Deal with Iraq," *Alexander's Gas and Oil Connections* 2, no. 1 (15 January 1997), available at www.gasandoil.com/goc/news/ntm70204.htm.

41. Duelfer, "Comprehensive Report," p. 26.

42. Iraq's official selling price (OSP) plus the premia equals the market price. Discussion paper prepared by oil overseers for 661 Committee, 14 March 2002, p. 6, on file with author.

43. According to the sources cited in the ISG report, purchasers were unwilling to pay surcharges of 50 center/barrel. For the most part the surcharges varied between 10 and 15 cents/barrel. Duelfer, "Comprehensive Report," p. 35.

44. Statement by Ambassador Patrick F. Kennedy, House Committee on Government Reform, Subcommittee on National Security, Emerging Threats, and International Relations, *The Iraq Oil-for-Food Program: Starving for Accountability*, 108th Cong., 2d sess., 21 April 2004, p. 6.

45. Testimony of Lee Jeffrey Ross Jr., House Committee on Government Reform, Subcommittee on National Security, Emerging Threats, and International Relations, *The Iraq Oil-for-Food Program: Starving for Accountability*, 108th Cong., 2d sess., 21 April 2004, p. 4.

46. "Under retroactive pricing, the Security Council did not approve a price per barrel until the oil was delivered to the refinery. The Iraqi government signed contracts

with suppliers without knowing the price it would have to pay until delivery. This allowed a fair market value to be set.” “United Nations: Observations on the Oil for Food Program,” Joseph A. Christoff, US General Accounting Office, GAO-04-651T, 7 April 2004, p. 8, footnote 7.

47. “Buyers have the choice of acquiring a wide variety of oil with different qualities and delivery characteristics (cargo size, geographic location, contractual characteristics, etc.). The price of Iraqi oil (OSP) is considered to be fair market value if the contract holders are making similar profits (with all circumstances taken into account) on Iraqi oil as they could make with alternative oils. Because of the substantial quality and logistics differentials of the different oils this does not necessarily mean that the OSP itself needs to be identical to the prices of alternative oils.” Report of oil overseers to the Security Council, September 2001, p. 2.

48. Discussion paper prepared by oil overseers for the 661 Committee, 14 March 2002, p.1.

49. Bernie Woodall, “Too early to change Iraq oil prices policy,” *Reuters*, 19 September 2002.

50. Statement of Benon V. Sevan, 26 February 2002.

51. Statement of Benon V. Sevan, 29 May 2002.

52. Statement made to author in a confidential interview with an anonymous member of the 661 Committee.

53. Statement by Ambassador Patrick F. Kennedy, House Committee on Government Reform, Subcommittee on National Security, Emerging Threats, and International Relations, *The Iraq Oil-for-Food Program: Starving for Accountability*, 108th Cong., 2d sess., 21 April 2004, p. 6.

54. *Ibid.*

55. *Ibid.*

56. Statement by Ambassador Robin L. Raphel, House Committee on Government Reform, Subcommittee on National Security, Emerging Threats, and International Relations, *The Iraq Oil-for-Food Program: Starving for Accountability*, 108th Cong., 2d sess., 21 April 2004, p. 4.

57. Statement for the Record of Michael Thibault, House Committee on Government Reform, Subcommittee on National Security, Emerging Threats, and International Relations, *The Iraq Oil-for-Food Program: Starving for Accountability*, 108th Cong., 2d sess., 21 April 2004, p. 2.

58. “United Nations: Observations on the Oil for Food Program,” Joseph A. Christoff, US General Accounting Office, GAO-04-651T, p. 5.

59. According to the briefing memo from the staff of the Government Reform Committee, “In late 2000, allegations of a kickback scheme involving after-sale service fees on humanitarian contracts emerged. The US and UK raised the concern with OIP and the 661 Committee and in March 2001 submitted formal proposals to address these concerns. In the absence of evidence, the proposal received no support from the 661 Committee members.” Memorandum from Thomas Costa, 16 April 2004, House Committee on Government Reform, Subcommittee on National Security, Emerging Threats, and International Relations, *The Iraq Oil-for-Food Program: Starving for Accountability*, 108th Cong., 2d sess., 21 April 2004, p. 7.

60. Statement for the Record of Michael Thibault, House Committee on Government Reform, Subcommittee on National Security, Emerging Threats, and International Relations, *The Iraq Oil-for-Food Program: Starving for Accountability*, 108th Cong., 2d sess., 21 April 2004, p. 3–4.

61. Author’s communications from former OIP staff, 22 August 2004.

62. "United Nations: Observations on the Oil for Food Program," Joseph A. Christoff, US General Accounting Office, GAO-04-651T, p. 8.

63. Statement by Ambassador Patrick F. Kennedy, House Committee on Government Reform, Subcommittee on National Security, Emerging Threats, and International Relations, *The Iraq Oil-for-Food Program: Starving for Accountability*, 108th Cong., 2d sess., 21 April 2004, p. 2–3.

64. Statement of John G. Ruggie, House Committee on International Relations, *The United Nations Oil-for-Food Program: Issues of Accountability and Transparency*, 109th Cong., 2d sess., 28 April 2004, p. 56.

65. This is especially true of the ISG report. The report notes, for example, that "the UN approved the final contract between Iraq and the lifting company," although the approval required was that of the Security Council members. The report maintains that "the oil surcharges were possible because of 'the relatively large built-in profit margin allowed by the UN Oil Overseers,'" although, in fact, the profit margins were subject to the approval of the Security Council committee and not the oil overseers. Duelfer, "Comprehensive Report," p. 34.

66. Under Article 96 of the UN Charter, the International Court of Justice may issue an advisory opinion to the Council, if the Council requests it. However, there is no entity with the power to override the decisions of the Security Council.

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