
RESTRUCTURING SANCTIONS AGAINST IRAQ



To develop ideas for restructuring sanctions against Iraq, the Watson Institute for International Studies at Brown University and the Decision Strategies Department of the U.S. Naval War College held a workshop on April 20, 2001. The two dozen participants included specialists in customs, finance, diplomacy, law and military affairs from governments, academic institutions, think tanks, international organizations and private firms. Organizers of the workshop, held in the Decision Support Center at the Naval War College, employed interactive software for anonymous comments, working groups and discussions to explore options for restructuring sanctions.

While the event was not intended to reach consensus on a package of new measures, there was considerable agreement among participants on the core elements of a new approach. This paper summarizes the suggestions that the organizers believe might be most useful to policy makers. It reflects their personal views, without any implied endorsement of their organizations or any other organization or agency.

SUMMARY: CORE ELEMENTS OF A NEW APPROACH

- Ease sanctions on the population while focusing controls on the Iraqi leadership
 - Lift existing holds on commercial items and infrastructure projects
 - Narrow the list of prohibited items
 - Promote investment and development opportunities
 - Impose targeted financial sanctions and travel bans on the Iraqi leadership
- Tighten financial controls
 - Maintain, but streamline, the escrow account
 - Work with Central Banks to enforce prohibitions on transactions with Iraq
 - Bring illicit oil sales under control
 - Create a register of companies allowed to purchase Iraqi oil
- Enhance monitoring and enforcement
 - Provide technical and financial assistance to neighboring states
 - Provide economic incentives for neighboring states to comply with sanctions
 - Create incentives for private sector compliance
 - Strengthen controls at the source
- Secure international cooperation
 - Overcome resistance of China, France and Russia
 - Initiate consultations on a new UNSC resolution
 - Offer neighboring states incentives for cooperation
 - Recast the issues through a concerted public relations campaign



The Problem

The current sanctions regime has succeeded in degrading the Iraqi regime's ability to produce weapons of mass destruction and threaten its neighbors over the past ten years. However:

- International support for and cooperation in implementing sanctions have eroded significantly, and;
- Iraq remains a threat (WMD, to its neighbors, to international oil supplies).

The current sanctions against Iraq need to be restructured.

Objectives of Restructured Sanctions against Iraq

- Strengthen efforts to contain Iraq's military capability (both WMD and its threat to neighboring states) by denying access to proscribed goods and non-conditional sources of finance.
- Address international concerns regarding the humanitarian effects of sanctions and remove the Iraqi regime's ability to blame the international community for the suffering of the Iraqi people.
- Restore international support for sanctions and maintain the credibility of the international community's commitment to contain Iraq.

Core Elements of a New Approach

No single measure is likely to accomplish the stated objectives. A comprehensive package of measures is required, including: *easing sanctions on the Iraqi population; tightening financial controls; enhancing border monitoring and enforcement; and securing international cooperation.*

Ease sanctions on the population while focusing controls on the Iraqi leadership

Lift existing holds on commercial items and infrastructure projects: This would signal a refocusing of sanctions on the regime, and demonstrate in tangible terms the change of policy to permit increased trade in commercial goods, discussed below. Such action can be taken immediately within current sanctions resolutions.

Narrow the list of prohibited items: The 1051 list should be revised to eliminate controls on most commercial goods, thereby freeing up trade beneficial to the Iraqi population and focusing enforcement resources on items that are truly critical for conventional arms and WMD. A concerted effort is required to: refine the list of dual-use goods; add any additional weapons that may be missing; and implement it effectively, given the risk of



increased bureaucratization at the UN. Items on the list should be limited to critical choke-point components, and not widely available commercial goods. New procedures (e.g. exemptions, expedited review, pre-certification, as-needed ordering/contracting) will be needed to ensure an efficient system of review of goods and payment through the escrow account. Clarification is needed as to whether inclusion on the list means control or denial; failure to do so will result in delays and more holds. It should be noted, however, that as long as the Iraqi regime maintains monopoly control of trade within Iraq and through the escrow account, the benefits of increased commercial trade to the Iraqi people will be limited.

Promote investment and development opportunities without benefiting the Iraqi regime: This would help to sever the link between the regime's control of the Iraqi economy and the condition of the Iraqi population. With sanctions focused on the regime, tangible signs of support for the population (through new infrastructure and education projects, foreign investment, employment opportunities, and economic development) may erode domestic support for the regime. Permitting non-oil exports from Iraq could also help certain segments of the population. Because of the continued strong centralized control of the economy by the regime, however, efforts to create such an environment will take time.

Impose targeted financial sanctions and travel bans on the Iraqi leadership and its principal supporters: One way to separate the Iraqi leadership from the Iraqi people would be to scale back the comprehensive financial sanctions, leaving a targeted financial sanction on a list of specifically named individuals and corporate entities operating from the country. Although such an action, taken ten years after comprehensive financial sanctions were first imposed, is likely to be more symbolic than substantive, it would focus pressure on the regime, rather than the people. If a travel ban were imposed on the same list of individuals (as threatened by UNSCR 1134) it would add a further stigma to the regime and its key supporters. Legislatively, banks should be protected from potential litigation risk, as long as their actions – blocking an account, canceling a letter of credit – are done for the purpose of sanctions compliance.

Tighten financial controls

Maintain, but streamline, the escrow account: The escrow account is the most efficient and effective way to control the volume of Iraqi expenditures on arms, military expansion, WMD development, and dual-use items. Eliminating the UN escrow account would significantly undermine the ability of the international community to monitor Iraq's weapons development. However, delays have limited the effectiveness of the mechanism and encouraged circumvention. Without reform of the approval/inspection process, the significant expansion of commercial goods exported to Iraq will overwhelm the process. New procedures would rely on notification but not prior review for most goods.

Work with Central Banks to enforce prohibitions on transactions with Iraq: Closer coordination among Central Banks could go a long way toward reducing illegal oil



exports from Iraq, minimizing the effectiveness of the oil surcharge, and blocking illegal arms and potential WMD goods from being imported into the country. Under existing legal authority (UNSCR 661), teams of external auditors could assist regional Central Banks with the detection of questionable transactions and closing down correspondent banking arrangements. Most private financial institutions are likely to cooperate given the incentives: non-compliance incurs reputation costs and jeopardizes their larger, and generally more important, core business. Banks could be provided a legal “safe harbor” (i.e. guaranteed that they would not be penalized), if they had taken reasonable steps to avoid sanctions violations. Better regulation of largely lawful transactions (which constitute the majority of transactions involving Iraq) would allow regulators to focus scarce enforcement resources on illegal transactions.

Bring illicit oil sales under control: Most of the income from the oil being smuggled out of Iraq into Jordan, Syria, and Turkey goes directly into the non-conditional sources of finance of the Iraqi regime. If this trade could be “legalized” (i.e. if the proceeds were transferred into national escrow accounts modeled after the UN account), the Iraqi regime’s ability to purchase imports of arms and WMD could be significantly reduced. Jordan, Syria, and Turkey could be provided financial incentives to place the proceeds into escrow accounts held and spent in their countries. Because there is some risk that the Iraqi regime would cut off the supply of oil to these countries, Saudi Arabia and/or Kuwait could be approached to supply oil and match any discounts provided by Iraq.

Create a register of companies allowed to purchase Iraqi oil: This would limit the Iraqi regime’s ability to impose a surcharge on oil sales, another lucrative source of non-conditional finance for the regime. Some have proposed that an independent private sector agent be contracted by the UN to manage the purchase and sale of Iraqi oil. Another alternative would be to create a register of companies approved to purchase Iraqi oil. Uniform guidelines could be established by the UN, establishing thresholds for firms listed on the register of approved companies (based on annual sales, turnover, or number of years in business). Domestic regulatory authorities could be called upon to implement these guidelines.

Enhance Monitoring and Enforcement

Effective sanctions require new efforts by neighboring countries to control Iraqi imports at the border. Given the limited financial resources, expertise, manpower and political will of neighboring states, skepticism regarding the efficacy of enhanced monitoring and enforcement (especially in goods rather than oil) is warranted. However, these measures are a critical component of a credible sanctions strategy.

Provide technical and financial assistance to neighboring states: The costs of creating an effective border monitoring system, along the lines of the Sanctions Assistance Missions in Yugoslavia are significant but could be financed by the escrow account. Training and support to neighboring states will be needed in the short-term, as well as strategies to dissuade customs officials from bribes. In the longer-term, institutional reforms are necessary to build effective national customs systems including seizure authority and



adequate penalties to deter violations. A few highly visible denials or interdictions of prohibited shipments will go a long way to signaling a resolve by states to enforce sanctions aggressively. In addition to official border crossings, attention should be given to unofficial entry points.

Provide economic incentives for neighboring states to comply with sanctions: Currently there are few compelling reasons for states to enforce sanctions, and forgo the considerable profits that citizens reap from illegal trade. The increased export of commercial goods, however, provides an opportunity for neighboring states to bring illicit trade into the legal tax-based system and thereby collect revenues. Imposition of a surcharge or import levy on goods and oil transiting countries could provide states with an incentive to implement an effective monitoring system and allow for recovery of costs associated with enhanced enforcement.

Create incentives for private sector compliance: An enhanced system of monitoring and enforcement provides the opportunity to improve corporate compliance with sanctions. A new system of pre-certified multinational suppliers could create incentives for private companies to cooperate with sanctions. Firms with strong internal control procedures would benefit through expedited review of shipments and swift checks at the border.

Strengthen controls at the source: The most effective means of preventing illicit goods from getting to Iraq is to control at the source – in most cases, the border is too late. Renewed emphasis on national export controls (made easier through a more focused list) and enhanced control of oil through a centralized system of approved brokers provide the first line of defense. Technological solutions to monitor goods (such as electronic tagging) may provide some benefit for specialized equipment, but are unlikely to be practical for most dual use goods.

Secure International Cooperation

Overcome the resistance of Russia, France and China: Russia and France benefit from the commercial opportunities afforded to companies willing to circumvent existing measures and, to some extent, from international criticism of the United States and the United Kingdom for the injury to innocent Iraqis caused by comprehensive sanctions. A suspension of sanctions on trade in commercial goods could recapture the moral high ground for sanctions proponents. Additionally, the enhanced legitimate export opportunities made possible by restructured sanctions would be attractive to Russia and France as would the opportunity to secure repayments on their substantial loans to Iraq. Russian cooperation might be especially encouraged by giving priority in repayments to those creditor countries with greatest exposure. Russia and France would also welcome opportunities to invest in petroleum development in Iraq. China, too, would be attracted by improved opportunities for legitimate export to Iraq, but its general opposition to interventionist measures might lead it to oppose any new sanctions unless all other P-5 countries openly supported them.



Initiate consultations on a new UNSC resolution: The measures outlined in this paper could not be achieved in their entirety under current UNSC resolutions. There are additional advantages to enacting a new resolution. It would signal the willingness of the international community to suspend the sanctions on commercial goods, perceived as having caused unwarranted humanitarian suffering. Politically, it could secure stronger support for restructured sanctions than was the case with UNSCR 1284, on which China, France and Russia abstained. Conversely, greater solidarity on a new resolution might not be possible, especially in light of France's insistence that it would oppose any "new sanctions" and Chinese and Russian opposition to continuing the escrow account. A judgment on whether to seek a new resolution may be possible only after intensive consultations with the P-5 and neighboring states to determine what may be feasible.

Offer neighboring states incentives for cooperation: In the context of the overall security situation in the Middle East, measures to enhance monitoring and enforcement require the cooperation of neighboring states, as discussed above. To achieve this, positive incentives may be offered, such as financial assistance (from the West or from such regional states as Saudi Arabia and Kuwait), assistance in customs training, joint staffing of border posts, and intelligence sharing. The governments of Jordan and Turkey may be reluctant to forsake current profits without assurances (e.g. from a trade surcharge) that new measures offset their loss. In these cases diplomatic pressure (e.g. a threat to worsen bilateral relations) may also be required. Across the region, governments may be reminded that alternatives to more effective sanctions (e.g. a stronger and aggressive Iraq, military action to counter an Iraqi build up or efforts to remove the Iraqi regime) are less attractive. Removing the pretext that everyone is cheating would make it harder for governments in the region to look the other way while their companies' violate sanctions on trade with Iraq, and an independent panel created by the Security Council could add pressure for compliance by "naming and shaming" violators.

Given the initiatives outlined in this paper, a recalcitrant response from the Iraqi regime may be anticipated. To secure additional leverage against the regime in negotiating the return of on-site inspectors, three measures may be undertaken. First, Iraq could be allowed representation in the UNCC, funded out of the escrow account. Second, that account could be used to pay Iraq's UN dues (as contemplated by UNSCR 1330). Lastly, enhanced border monitoring can be presented as meeting Iraqi concerns about the quality of imported goods.

Recast the issues through a concerted public relations campaign: The public relations effort required to sell this approach at home and abroad would also be challenging. Its appeal to the reluctant partners in the P-5 would depend heavily on the perception that the package would suspend measures that have injured innocent Iraqis. Improvements would not be immediate, though, and pressure to conduct meaningful weapons inspections would preclude a full termination of sanctions. At the same time, publics in some sending countries and countries in the region who fear Iraqi military power would want to be reassured that the new sanctions would be even tougher than the current approach in coercing the Iraqi leadership to do the things it should.