
The Road to Baghdad is Paved with Good Intentions

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Abstract

In commenting on the articles by Craven and O'Connell, the author challenges the validity of the internationalist fantasy of an effective UN-based collective security system in the post-Cold War world. He characterizes the Security Council-imposed sanctions against Iraq as an effort to give the appearance of doing something while avoiding the more difficult, but likely more effective choice of seeking to destroy the regime of Saddam Hussein through massive military intervention. He concludes with an appeal for clarity concerning the objectives of sanctions, whether punishment for past wrongs or as a way to influence future behaviour.

How do we respond to an utterly inhumane adversary, without losing the core of our own humanity? Can international law yield a viable answer to this challenge or rather does the problem itself not point us to the limits and frailties of the law? After 11 September, these questions take on even more pressing significance.

Whatever illusions or prejudices the Cold War might have fostered, one fantasy it saved us from was the notion that the United Nations institutions, particularly the Security Council, are up to the task of assuring global peace and security. Between the fall of the Berlin Wall and the attack of 11 September this fantasy re-emerged in a powerful way, especially among the kind of people my friend David Kennedy likes to describe as 'internationalist' in outlook. A careful examination of the case of Saddam Hussein's Iraq is a helpful curative to the fantasy, at least if one is willing at all to have one's eyes opened.

In a judgment I believe was probably erroneous (with all due respect to now US Secretary of State Colin Powell), the United States and its allies, after ending the immediate threat to Kuwait in the Gulf War, declined to march on to Baghdad, and remove in a more decisive way the general threat to international peace and security posed by Saddam Hussein and his designs on weapons of mass destruction. Despite genuine and sustained efforts to avoid mass civilian casualties in the Gulf War, the Iraqi people bore a very high human cost from the War, while being in the end deprived of the benefit of being liberated from the oppression of Saddam Hussein. As

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someone whose professional life revolves around international law, it is not a comforting thought that the parameters of existing international law with respect to the use of force might well legitimize this choice to extract a high price from the Iraqi people in collective ‘self-defence’ of Kuwait, without providing the corresponding benefit of liberation from Saddam.

Saddam Hussein’s threat to peace and security having been left in tact, more or less, after the Gulf War, the United Nations, and even more so the main powers on the Security Council, would have appeared impotent if they were to do nothing in response, thereby putting the lie to the revived fantasy of UN-based collective security in a post-Cold War world. On the other hand, the one clear effective strategy — the destruction of the Hussein regime through overpowering military force — was not a palatable or possible option.

In these circumstances, it is understandable that the approach of Security Council sanctions seemed attractive. The sanctions would give the appearance of doing something against the Iraqi regime, while avoiding the costs of massive military intervention. The fantasy of post-Cold War Security Council effectiveness would be preserved just a little longer.

As Matthew Craven illustrates in his fine paper, the price of this fantasy has been mostly paid by the Iraqi people. Once again, due in no small measure to a certain taste for pious fraud in the UN world, they have been subject to costs, without corresponding benefits. The sanctimonious fraud is that when people are killed by malnutrition or disease due to our economic sanctions, we are not responsible for such deaths in the same way, or we can pride ourselves in not being inhumane in the same way, as when they occur in direct military action. In the case of Iraq, there was just enough causal indeterminacy and informational uncertainty surrounding the post-sanctions situation, to sustain the pious fraud among those with a strong interest in believing it.

But, as Craven shows, the evidence mounted to the point where the UN could not avoid a response. And the response is just the very one that maintains the fantasy of the Security Council as an effective — and humane — enforcer of peace and security — ‘smarter’ sanctions!

I share fully Craven’s scepticism as to whether this does anything but replay the basic problem. As he suggests, there is little evidence that initial attempts at targeting have made sanctions more humane in practice (his discussion of the humanitarian ‘exemptions’ is enlightening), and there is some reason to believe that targeting may make them even less effective.

What indeed is the notion of effectiveness here? Inasmuch as the Security Council purports to be answering threats to peace and security (and not punishing bad behaviour, along the lines of O’Connell’s discussion of ‘countermeasures’), then the theory has to be that sanctions will alter Saddam Hussein’s behaviour in the appropriate way. The alternative theory, that the sanctions will cause so much pain to the Iraqi people that they will overthrow Saddam, would of course implicate the Security Council in the kind of inhumane conduct it wants at all costs to avoid being

seen as endorsing, for in that case causing civilian suffering would be the very intended mechanism of effecting the desired result.

Now it is legitimate to ask, on the basis of what intelligence, what concrete analysis, of Saddam's motivations and operations, did the Security Council come to the conclusion that its sanctions would alter Saddam's behaviour in the desired way? To do the analysis, you would need to know a great deal about Saddam's access to money and weapons, about the extent he might be able to divert the main costs of the sanctions to his own citizens or to other regimes, about just how much he prioritizes developing weapons of mass destruction as an objective for which he would be prepared to sacrifice much else. Perhaps I would trust the Mossad to do this analysis and come up with a credible answer, but I'm sceptical about whether it was ever really even attempted in a competent manner at the UN. Ironically, the smarter you want to make sanctions, the better still your intelligence and analysis need to be.

Could the difficulties the Security Council got into have somehow been avoided had the Council's actions been subject to constraints of international humanitarian law? Here, Craven is again clear-eyed. As he shows, if the normative imperative is effectiveness in changing Saddam's behaviour, then at most humanitarian law can constrain the Security Council to choose those *effective* means of changing Saddam's behaviour that respect humanitarian principles. Yet in the absence of any real certainty about what is effective, in practice this does not amount to any real normative constraint at all. Worse still, as Craven very shrewdly implies, not only would there not be any real, deployable constraint, but the Security Council might too easily be able to clear its conscience, satisfied (while being unconstrained for all intensive purposes) that it is operating in accordance with humanitarian principles.

If the UN has yet to draw the right lessons from the experience with Iraqi sanctions, there are many others who are using this example opportunistically to have us draw the wrong lessons, notably the kind of commercial interests who do not want morality to interfere with international business as usual. One wrong lesson is that sanctions never work. First of all, as Craven notes, changing behaviour through economic coercion is only one kind of objective that sanctions might have. They could instead be aimed at expressing moral outrage, at shaming a regime sensitive to being shamed, or at showing solidarity with a dissident or resistance movement challenging an oppressive government. The failure of Security Council sanctions to make Saddam stray from his goal of developing and deploying weapons of mass destruction, tells us little about the costs and benefits of sanctions in many other contexts. As Lisa Martin concludes in her social science study of multilateral economic sanctions, 'we should question arguments that sanctions never work because alternative sources or markets always exist for sanctioned goods'.¹ As Martin's work shows, depending on the circumstances of the target regime, the objectives, and the kind of cooperation among sanctioning states that can be sustained, multilateral economic sanctions may well be a viable instrument of foreign policy. Similarly, however unacceptable the human costs of sanctions may be in the case of Iraq, there may be contexts where such

¹ L. Martin, *Coercive Cooperation: Explaining Multilateral Economic Sanctions* (1992), at 250.

costs do not pose nearly as much of a strong moral argument against sanctions: one such example is that of South Africa, where the internal opposition itself called for the international community to impose sanctions, in full awareness that poor black working people would pay a price.²

O’Connell thinks that some of the problems with subjecting Security Council sanctions to appropriate normative constraints could be addressed if one were to conceive the sanctions in terms of countermeasures. In this case, one could require that the sanctions be proportional to the injury suffered.

The focus under this approach becomes justice or reparation for a past wrong or injury. But is this the real concern of the international community in dealing with Iraq? If that were so, then the international community would be fiddling while Rome burns — slapping Saddam on the wrist for past offences is a dangerous distraction from the task of ensuring that he doesn’t eventually end up using, or helping others to use, weapons of mass destruction. By redefining the *goal* as punishment for past wrongs, O’Connell is able to make the point that sweeping sanctions, which might involve significant loss of life, are out of proportion to the wrong done by Iraq’s weapons programmes. But if we are talking about *effective* prevention of a possible use of nuclear weapons or chemical or biological weapons on a mass scale, it is far from obvious that the loss of several thousand lives would be an unacceptable price to pay. It would depend, in the circumstances, upon a sober evaluation of the seriousness of the threat, and the likelihood that the actions involved would be effective in stemming it. O’Connell’s motivation in moving to countermeasures is a noble one — she thinks that it will save lives. But it could well cost them — the reason is that at least with the economic coercion model, the proven ineffectiveness of the sanctions in changing behaviour becomes a pretty strong reason for modifying or removing them eventually. But countermeasures by definition don’t need to be effective in changing behaviour — they only need to punish, to impose pain. Thus, while the principle of proportionality might limit the lives exacted by any particular countermeasure, the relaxation of any accountability for results in terms of changed behaviour, may mean a net reduction of meaningful normative constraint.

But this then leads us to the question — pain on whom? Of course the legal answer is: ‘the state’. But a moral sensitivity informed by human rights law would of course lead us to ask: *who* within the state feels the pain? The answer, based upon experience to date, is that it will be very difficult to make Saddam Hussein feel the pain, as opposed to members of the Iraqi population who could not, on any plausible moral theory, be understood to share culpability with the Iraqi leadership for the acts being punished.³

² See Maloka, “‘Sanctions Hurt but Apartheid Kills!’: The Sanctions Campaign and Black Workers”, in N. C. Crawford and A. Klotz (eds), *How Sanctions Work: Lessons from South Africa* (1999).

³ I admire O’Connell’s style of legal scholarship and value her discussion of countermeasures, even if I do not think it solves the dilemma posed by Iraq. One virtue of her essay is that it should force us to think in each case about what we are doing: Is our goal really to alter behaviour or is it to impose a punishment for a past wrong? Confusion about objectives is often a problem that plagues the project of sanctions, as well as debate about them.