

# IMPROVING THE HUMANITARIAN SITUATION IN IRAQ: “OIL-FOR-FOOD” POST RESOLUTION 1284 (1999)

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Gerard P. Mc Hugh  
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## *Background and Context*

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United Nations Security Council resolution 1284, passed on December 17<sup>th</sup> 1999, represents an opportunity for a radical departure from business as usual with regard to the multiple dimensions of UN relations with Iraq. The humanitarian provisions of this resolution are centered on the continuation and expansion of the “Oil-for-Food” Program, and thus offer *some* scope for improving the humanitarian situation in this beleaguered country. However, it should be understood that these initiatives, in the absence of parallel strategies (such as increased transparency and accountability on the part of UN Sanctions Committees), will not facilitate the dramatic and radical changes needed to *substantially* improve the situation in Iraq.

The months following passage of resolution 1284 have witnessed little substantive improvement in the humanitarian situation in Iraq. The Phase VII 180-day report of the Secretary-General on the implementation of the “Oil-for-Food” Program notes that the “...*nutritional and health status of the Iraqi people continues to be a major concern...*”<sup>1</sup> This concern, however, has not been

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translated into political action on the part of the UN Security Council, the 661 Committee, or the Government of Iraq. More troubling is the lack of accountability on the part of these actors to ensure that the basic human rights of innocent civilians are protected.

Basic health indicators for Iraq suggest that malnutrition rates have stabilized, but considering that one in every five children is suffering from malnutrition, this is hardly encouraging.<sup>2</sup>

The secondary effects of declining general health of the population, and declining socio-economic conditions, are still not fully understood.<sup>3</sup> In short, the civilian population in Iraq continues to endure a humanitarian catastrophe.

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<sup>1</sup> United Nations Security Council, *Report of the Secretary-General Pursuant to paragraph 5 of Security Council resolution 1281 (1999)*, UN document ref. S/2000/520 (New York: United Nations, June 1 2000) : paragraph 97.

<sup>2</sup> United Nations Children’s Fund, *UNICEF Emergency Programmes: Iraq Donor Update* (New York: United Nations Children’s Fund, August 8, 2000).

<sup>3</sup> The secondary and tertiary effects of chronic malnutrition, for example, include: impaired intellectual development; increases in the instance, severity and duration of diseases; increased ‘next-generation’ maternal mortality due to peri-natal complications etc. See: United Nations Children’s Fund, *The State of the World’s Children 1998: Focus on Nutrition* (New York: Oxford University Press, 1998).

The “Oil-for-Food” Program can no longer be considered a temporary measure. After three years of operation, the Program has not been effective in addressing even the most basic needs of the population.<sup>4</sup> The majority of fatalities now occurring in Iraq are the result of preventable diseases/ailments. In addition to shortcomings in Program implementation from the UN side, the Government of Iraq clearly has little incentive or motivation to engage fully with UN agencies.

In the initial phases of implementation of the “Oil-for-Food” Program, the primary obstacles to improving the humanitarian situation centered on: (1) the lack of sufficient revenue from the sale of Iraqi oil to finance the Program, (2) limitations on the availability of certain goods due to holds at the 661 Committee, and (3) lack of a “cash component” in the South/Center of Iraq. The situation has changed significantly since the end of 1999.

As of July 2000, there was excess revenue available compared to the value of contracts submitted by the Government of Iraq. The facility for ‘automatic’ approval of certain goods by the UN Secretariat notwithstanding, the *ad hoc* actions of the 661 Committee still represent one of the primary obstacles to improving the lives of millions of Iraqis. Given the facility for a “cash component” under resolution 1284, the “Oil-for-Food” Program is evolving rapidly, and potentially, one of the main obstacles now is the reluctance of the Government of Iraq to embrace initiatives, that in their view would institutionalize and perpetuate sanctions.

Despite oft-cited criticisms that any efforts to improve existing UN humanitarian operations in Iraq merely constitute ‘window-dressing’, it is clear that there is little political will at the Security Council to force a radical departure from the *status quo*. Dominant Security Council member states and the Government of Iraq alike consider themselves to be in a “comfortable”

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position. It is unlikely that sanctions will be lifted or suspended in the immediate future. It *is* likely, however, that non-military sanctions will continue to erode, and Iraq will continue to engage actively with ‘preferred’ trading partners, and will use every opportunity to seek gains at the margins of the sanctions regime. “Oil-for-Food”, therefore, is the *only* mechanism currently in place to deal with the humanitarian tragedy in Iraq.

This document highlights issues central to improving the humanitarian situation in Iraq, including: (1) Contract Holds by the 661 Committee, (2) UN Observation Mechanisms, (3) the Distribution Plan and Contract Submission, (4) Impact of “Oil-for-Food”, (5) the Role of the Secretary General / Secretariat, and (6) a “Cash Component” in South/Central Iraq. While specific recommendations are advanced in the context of the expansion of the “Oil-for-Food” Program envisioned under resolution 1284 (1999), the recommendations provided here are premised on the assertion that a radical shift in UN thinking on Iraq is required, and that these recommendations will only provide an interim solution to a crisis situation.

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<sup>4</sup> The Secretary-General’s two-year review of the “Oil-for-Food” Program in April 1999 noted: “...[the programme] cannot – and was never meant to – meet all the humanitarian needs of the Iraqi people, nor can it restore Iraq’s economic and social infrastructure to pre-1990 levels.” United Nations Security Council, *Review and Assessment of the Implementation of the Humanitarian Programme Established Pursuant to Security Council Resolution 986 (1995) (December 1996-November 1998)*, UN document ref. S/1999/481 (New York: United Nations, April 28, 1999) : Paragraph 115.

## *Contract Holds by 661 Committee*

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The current working procedures of the Security Council 661 Committee represent a significant obstacle to implementing the humanitarian provisions of resolution 1284. The issue of contract 'holds' by the 661 Committee has become a very contentious one. It is manifestly evident that the absence of certain goods and components can have a multiplier effect in terms of cross-sectoral negative impacts on Program implementation.

The initiation of 'automatic' processing of contracts on pre-approved lists has done little to reduce the holds on critical items for rehabilitating the infrastructure. Essentially, the lists constitute a range of items that are benign and non-controversial. This provision of resolution 1284 (paragraph 17) merely shifts the workload from the 661 Committee to the Secretariat i.e. the Office of the Iraq Program (OIP).

The United States, responsible for placing a large number of holds at the 661 Committee, justifies this policy by referring to the lack of adequate observers on the ground to verify end-use of the goods.<sup>5</sup> In outlining the policy of US representatives in relation to contract 'holds', Ambassador James Cunningham noted that many of the holds were for inappropriately-presented contracts.

**Recommendation 1:** The Office of the Iraq Program should screen all incoming contracts to ensure that the number of holds due to inappropriate or missing information is reduced. Contracts deficient in any way should not be forwarded to the 661 Committee.

Other contracts are placed on hold due to the lack of sufficient information regarding the intended end-use.

**Recommendation 2:** The 661 Committee and the Office of the Iraq Program should engage with UN humanitarian agencies (e.g. UNICEF) and international experts (e.g. The International Telecommunications Union) to provide technical assessments of certain contracts.

**Recommendation 3:** As part of a consolidated 'source-to-use' contract management database, the Office of the Iraq Program should provide process and project identifiers to all contracts (where possible). This measure will identify the intended end-use to both the 661 Committee and the observers on the ground.

As at July 31<sup>st</sup>, 2000 the total value of contracts on hold was US \$ 1.71 billion, a figure representing 10 percent of all contracts submitted over Phases I – VIII.

**Recommendation 4:** Any contracts 'on hold' for more than 14 days should be automatically referred back to the Committee for definite decisions, and an explanation of the reason for the hold should be provided by the Committee member concerned.

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<sup>5</sup> See, for example: President of the United States, *Iraq's Compliance with the U.N. Security Council: Communication from the President of the United States Transmitting a Report of the Status of Efforts to Obtain Iraq's Compliance with the Resolutions Adopted by the U.N. Security Council, Pursuant to 50 U.S.C. 1541* (Washington, DC: US Government Printing Office, October 5, 1999) : p. 6.

In January 1999, the members of the Security Council agreed to a number of practical proposals that would improve the work of Sanctions Committees. In the case of the 661 Committee, however, there appears to be little motivation to implement the agreed measures.<sup>6</sup>

### *UN Observation Mechanisms*

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The United Nations observation mechanism represents a core element of the “Oil-for-Food” Program. Existing mechanisms, however, are ineffective.

The observation facilities in Baghdad are understaffed; several important sectors are underrepresented in their observation activities; there is inadequate cooperation on the part of the Government of Iraq in several sectors; there is a lack of effective coordination between observers on the ground, UN staff at OIP and 661 Committee members. In July 2000 the UN Humanitarian Coordinator in Iraq decided to temporarily withdraw UN expatriate personnel from four Southern Governorates, citing security concerns.

Paragraph 35 of the Memorandum of Understanding (MoU) signed between the Government of Iraq and the Secretariat of the United Nations states that the objectives of the observation process include:<sup>7</sup>

*“(b) to ensure the effectiveness of the operation and determine the adequacy of the available resources to meet Iraq’s humanitarian needs.”*

It has been clear for some time that the available resources are not adequate to meet Iraq’s humanitarian needs.

**Recommendation 5:** Travel restrictions imposed on certain sectoral activities constitute an obstacle to effective Program implementation, and are not in congruence with the intent of the MoU. The Government of Iraq should be pressed to review its activities relating to the provision of travel permits to ‘local’ UN employees, and other issues that currently restrict the freedom of movement of UN observers.

**Recommendation 6:** The establishment of a comprehensive contract and goods tracking database would greatly assist the work of the 661 Committee, the Office of the Iraq Program, and the observers on the ground. Such a system, managed by OIP, could provide detailed information regarding location, project references, end-use, inspection intervals etc. (See Recommendation # 3 above).

### *The Distribution Plan and Contract Submission*

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The Secretary-General approved the Distribution Plan for Phase VII of the “Oil-for-Food” Program on January 12, 2000.<sup>8</sup> The overall allocation for the implementation

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<sup>6</sup> United Nations Security Council, *Note by the President of the Security Council: Work of the Sanctions Committees*, UN Document ref. S/1999/92 (New York: United Nations, January 29, 1999).

<sup>7</sup> United Nations Security Council, *Memorandum of Understanding between the Secretariat of the United Nations and the Government of Iraq on the Implementation of Security Council Resolution 986 (1995)*, UN Document ref. S/1996/356 (New York: United Nations, May 20, 1996) : Paragraph 35.

of the Program under the Plan was \$3.522 billion, including \$600 million for oil spare parts.

This Distribution Plan for Phase VII was therefore approved after the adoption of resolution 1284 (1999) which, in paragraph 15, removed the ceiling on the dollar value of oil revenues that could be generated by Iraq. Moreover, the total value of letters of credit pertaining to oil sales for Phase VI was over \$7.4 billion. Estimates of oil export revenue for Phase VII identified a total value of approximately \$8.4 billion, of which \$5.4 would be available for the implementation and operation of the Program.<sup>9</sup>

The allocation in the Distribution Plan for Phase VII, therefore, represented approximately 65 percent of total funds available to the Program during this phase. Of the total allocation of \$3.522 billion, contracts worth only \$1.9 billion, or roughly 54%, were received by the Office of the Iraq Program *during* Phase VII. A major constraint therefore is the low volume and rate of submission of contracts by the Government of Iraq.

**Recommendation 7:** Future Distribution Plans should use a ‘floating’ sectoral allocation, based on a percentage of projected revenues calculated on a two-monthly basis, with initial revenue projections for the phase being taken from the preceding 180 days.

**Recommendation 8:** The Government of Iraq should be asked to identify the necessary requirements to facilitate improved rates and volume of contract submission – e.g. computers, quality control testing inputs etc.

**Recommendation 9:** The Office of the Iraq Program should work with the Government of Iraq to formulate a cross-sectoral Distribution Plan, which would present contracts in project-, or process-flow formulations.

### *Impact of “Oil-for-Food”*

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The Office of the Iraq Program has not conducted a review of the impact of the “Oil-for-Food” Program on the health and well-being of the people of Iraq, despite repeated calls for such an assessment by the UN Office of the Humanitarian Coordinator in Iraq during 1999 and early 2000. Such a review is essential to determining the effectiveness of the Program.

**Recommendation 10:** Notwithstanding the provisions of paragraph 18 of Security Council resolution 1302 (2000), calling on the Secretary-General to appoint independent experts to prepare a comprehensive report and analysis of the humanitarian situation in Iraq, OIP should undertake a qualitative review of Program impact on the health and well-being of the population, calling as necessary on the resources of UN humanitarian agencies in Iraq.

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<sup>8</sup> United Nations Security Council, *Letter dated 12 January 2000 from the Secretary-General Addressed to the President of the Security Council*, UN document ref. S/2000/18 (New York: United Nations, January 12, 2000).

<sup>9</sup> United Nations Security Council, *Report of the Secretary-General Pursuant to paragraph 5 of Security Council resolution 1281 (1999)*, UN document ref. S/2000/520 (New York: United Nations, June 1 2000) : paragraph 96.

**Recommendation 11:** The reports of the Secretary-General on the implementation of the Program should be based on quantitative indicators of health and well-being, many of which are in existence, or are planned (e.g. MICS survey planned by UNICEF).

With regard to the impact of “Oil-for-Food”, it should be noted that, under the provisions of Security Council resolution 666 (1990), the 661 Committee is mandated to report to the Council as to how the humanitarian needs of the people of Iraq can be met:<sup>10</sup>

*“Decides that if the Committee [661 Committee], after receiving the reports from the Secretary-General, determines that circumstances have arisen in which there is an urgent humanitarian need to supply foodstuffs to Iraq ... in order to relieve humanitarian suffering, it will report promptly to the Council its decision as to how such need should be met.”*

The 661 Committee has, to date, chosen not to exercise this mandate.

### *Role of the Secretary-General and the Office of the Iraq Program*

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Paragraph 3 of United Nations Security Council resolution 1302 (8 June 2000) reaffirmed the mandate of the Secretary-General in relation to ensuring the effective implementation of the Program:<sup>11</sup>

*“...to take the actions necessary to ensure the effective and efficient implementation of this resolution, and to continue to enhance as necessary the United Nations observation process in Iraq...”*

The Office of the Iraq Program was established by the Secretary-General to essentially manage the affairs of the Secretariat in relation to resolutions 661 and 986.<sup>12</sup> Therefore, by the provisions of resolutions 986 (1995) and 1302 (2000), the Secretary-General (and by direction, the Office of the Iraq Program) has been given the mandate to enter into any necessary arrangements and agreements to ensure the effective implementation of the Program.

For a variety of reasons, Program implementation has not been efficient or effective since the beginning. The Office of the Iraq Program can, and must, expand its activities in Program planning and implementation to improve effectiveness of the Program on the ground.

**Recommendation 12:** The Office of the Iraq Program should reorient the focus of the regular reports on Program implementation (90- and 180-day reports) to provide a more forward looking assessment of Program implementation, to include regular updating of quantitative health, nutrition and socio-economic indicators. In this regard, OIP can incorporate the work of several UN agencies into the reporting process (e.g. the household surveys planned by UNICEF).

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<sup>10</sup> UN Security Council resolution 666 (September 13th 1990), Paragraph 5.

<sup>11</sup> United Nations Security Council resolution 1302, 8 June 2000. Under Security Council resolution 986, the Secretary General is authorized to “...enter into any necessary arrangements or agreements” to “...ensure the effective implementation of this resolution [986]”.

<sup>12</sup> United Nations Security Council, *Report of the Secretary General Pursuant to Paragraph 3 of Resolution 1111 (1997)*, UN document ref. S/1997/935 (New York: United Nations, 1997) : Paragraph 4.

**Recommendation 13:** The Office of the Iraq Program should make provisions to ensure that there is more effective coordination between UN humanitarian agencies both at the headquarters level and on the ground in Iraq. This would include outlining areas of common action or project overlap, and ways to leverage the activities of each agency. For example, the expanded network of Community Child Care Units (CCCU) throughout Iraq could be used as the basis for coordinated activities of several agencies.

**Recommendation 14:** OIP should develop, working in conjunction with UN humanitarian agencies and the Government of Iraq, a strategic plan for the implementation of the Program which would transcend the 180-day operational focus.

**Recommendation 15:** OIP should identify elements of the Memorandum of Understanding that could be re-negotiated to facilitate improvements in the Program. For example, the number and role of UN observers in the South/Center should be discussed with the Government.

### *“Cash Component” in South/Central Iraq*

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The absence of a component of revenues from the sale of Iraqi oil in the South / Center to cover in-country expenses associated with the Program is one of the primary obstacles to its effective implementation. Cash resources are required to cover installation, servicing and routine maintenance of both existing elements of the civilian infrastructure, and goods procured under the Program. The availability of local revenues could also be used for local procurement of goods and for re-energizing specific sectors, such as the agriculture, food and education sectors.

It should be noted that any such local disbursement (to ultimate recipients) of cash revenues would most likely be in Iraqi Dinars. Paragraph 24 of Security Council resolution 1284 (1999) outlined the role of the Secretary-General regarding a “cash component”:

*“Requests the Secretary-General to make the necessary arrangements, subject to Security Council approval to allow funds deposited in the escrow account established by resolution 986 (1995) to be used for the purchase of locally-produced goods and to meet the local cost for essential civilian needs ... including, where appropriate, the cost of installation and training services.”*

In his report to the Council of January 14, 2000 concerning the implementation of paragraphs 15 to 30 of resolution 1284, the Secretary General noted that the Office of the Iraq Program had initiated a review to be undertaken by the United Nations Office for Project Services (UNOPS) in relation to the provisions of paragraph 24 (1284).<sup>13</sup> However the Phase VII 180-day report issued on June 1 noted that recommendations had not yet been passed to the Security Council.

Some Security Council members are reluctant to give the Government of Iraq control over even a portion of the oil revenues. This reluctance arises from concerns that the

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<sup>13</sup> United Nations Security Council, *Report of the Secretary General Pursuant to Paragraph 32 of Security Council Resolution 1284 (1999)*, UN document ref. S/2000/22 (New York: United Nations, 14 January 2000) : paragraph 9.

Government of Iraq will not use this revenue for humanitarian purposes. However, this concern is inconsistent with the tolerance shown by Security Council members for the on-going illicit bi-directional trade with Turkey and Jordan (and to a lesser extent Syria) and the smuggling of oil and petroleum products out of Iraq. At a conservative estimate, this trade is valued at \$500-700 million per 180-day Phase of implementation, a significant percentage of which is almost certainly going directly to the ruling elite.

The attitude adopted therefore by the Security Council is that revenue secured by the regime through regional trade in contravention of sanctions and by oil smuggling is politically acceptable, whereas the provision of limited resources to the Government in a controlled manner is not!

The Government of Iraq considers any 'local' control of oil revenues as an affront to the sovereignty of the country. Moreover, as a critical element of resolution 1284, the Government of Iraq may be reluctant to enter into negotiations regarding a "cash component", as this would indicate some implicit acceptance of the resolution.

**Recommendation 16:** OIP and/or UNOPS should develop a menu of options for facilitating the implementation of the provisions of paragraph 24, resolution 1284 (1999). Such options for a "cash component" could include: (1) "cash component" in dollars or dinars reimbursed through Jordanian banks, (2) "cash component" built into infrastructure contracts, (3) incremental "cash component" by sector, (4) "cash component" by regular transfer from UN escrow account to designated bank – effectively using the UN escrow a/c as a 'holding' account.

**Recommendation 17:** The 661 Committee should engage financial experts to determine how any "cash component" could be implemented as a precursor to the 'financial mechanisms' referred to in paragraph 36 of resolution 1284 (1999). These ambiguous 'financial mechanisms' will be necessary for any future suspension of sanctions, yet there appears to be a lack of interest in investigating these measures in any serious way on the part of the Council.

Iraq has rejected any notion of a "cash component", as currently proposed. However, the Government may be more conducive to negotiation on this matter if serious efforts were undertaken to limit access to hard currency obtained by the regime in Baghdad through illegal smuggling.

**Recommendation 18:** The 661 Committee should establish a sub-panel of experts to determine the extent of violations of sanctions. The UNITA sanctions committee (864 Committee) successfully produced a report highlighting instances of 'sanctions busting' that benefit UNITA.<sup>14</sup>

**Recommendation 19:** UN-staffed Sanctions Assistance Missions (SAMs) should be established at the crossing points on the borders with Turkey and

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<sup>14</sup> Ambassador Anders Mollander, *Report of the Panel of Experts on Violations of Security Council Sanctions Against UNITA*, Annex I to, *Letter dated 10 March 2000 from the Chairman of the Security Council Committee Established Pursuant to resolution 864 (1993) Concerning the Situation in Angola Addressed to the President of the Security Council*, UN Document ref. S/2000/203 (New York: United Nations, March 10, 2000).



Jordan to implement a 'porous' monitoring of goods entering and leaving Iraq.<sup>15</sup> Humanitarian and benign items would be free to cross the border, however prohibited goods would be subject to seizure.

Finally, any discussion of 'smart' or more-targeted sanctions is futile in an environment where there is insufficient political will to eliminate overt violations under the existing regime.

## *Conclusion*

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In contrast to earlier phases of implementation of "Oil-for-Food", recent phases have been characterized by an excess of revenue over Distribution Plan allocation, and in addition, a lethargic attitude on the part of the Government of Iraq in submitting contracts.

Both the Government of Iraq and dominant members of the Security Council consider themselves to be in a 'comfortable' position. For as long as Iraq can secure access to hard currency through illicit trade and oil smuggling, there is little incentive to engage with the United Nations regarding resolution 1284, or any proposed "cash component". The continued availability of hard currency is one of the most critical 'pillars' supporting the regime of Saddam Hussein.

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### **Both the UN Security Council and the Government of Iraq bear responsibility for the current humanitarian disaster**

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Both the UN Security Council and the Government of Iraq bear responsibility for the current humanitarian disaster. The Security Council can adopt a "twin-track" approach to moving forward: by concurrently making improvements to "Oil-for-Food", and also by moving towards a more viable long-term solution to the humanitarian situation in Iraq. Moreover, the Security Council can play an important role in ensuring that the Government of Iraq lives up to *its* responsibilities in providing for the needs of the Iraqi people.

At present there is insufficient political will and consensus at the Security Council to enforce accountability on the Government of Iraq, and to implement appropriate measures to end the devastation wrought on the Iraqi people – both from within their own borders, and externally.

For further information, contact:

*Gerard P. Mc Hugh*

*Ph: +353 – 86 – 6050595*

*Fax: +353 – 1 – 6283536*

*Email: Gerard-McHugh@worldnet.att.net*

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<sup>15</sup> For an assessment of the use of SAMs in the case of Yugoslavia, see: David Cortright and George A. Lopez, "Sanctioning Yugoslavia," Chapter 4 in: *The Sanctions Decade: Assessing UN Strategies in the 1990s* (Boulder, CO: Lynne Rienner, 2000) : 63-86.