

UN Security Council, Sanctions Imposed Upon Iraq

A. Security Council Resolution 661 (1990)

[Source: UN Doc. S/RES/661 (August 6, 1990). Available on [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/661\(1990\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/661(1990))]

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

The Security Council,

Reaffirming its resolution 660 (1990) of August 2, 1990,

Deeply concerned that that resolution has not been implemented and that the invasion by Iraq of Kuwait continues with further loss of human life and material destruction, [...]

Acting under Chapter VII of the Charter of the United Nations,

1. *Determines* that Iraq so far has failed to comply with paragraph 2 of resolution 660 (1990) and has usurped the authority of the legitimate Government of Kuwait; [...]
2. *Decides* that all States shall prevent:
 - a. The import into their territories of all commodities and products originating in Iraq or Kuwait exported therefrom after the date of the present resolution;
 - b. Any activities by their nationals or in their territories which would promote or are calculated to promote the export or trans-shipment of any commodities or products from Iraq or Kuwait; and any dealings by their nationals or their flag vessels or in their territories in any commodities or products originating in Iraq or Kuwait and exported therefrom after the date of the present resolution,

including in particular any transfer of funds to Iraq or Kuwait for the purposes of such activities or dealings;

- c. The sale or supply by their nationals or from their territories or using their flag vessels of any commodities or products, including weapons or any other military equipment, whether or not originating in their territories but not including supplies intended strictly for medical purposes, and, in humanitarian circumstances, foodstuffs, to any person or body in Iraq or Kuwait or to any person or body for the purposes of any business carried on in or operated from Iraq or Kuwait, and any activities by their nationals or in their territories which promote or are calculated to promote such sale or supply of such commodities or products;
3. *Decides* that all States shall not make available to the Government of Iraq or to any commercial, industrial or public utility undertaking in Iraq or Kuwait, any funds or any other financial or economic resources and shall prevent their nationals and any persons within their territories from removing from their territories or otherwise making available to that Government or to any such undertaking any such funds or resources and from remitting any other funds to persons or bodies within Iraq or Kuwait, except payments exclusively for strictly medical or humanitarian purposes and, in humanitarian circumstances, foodstuffs;
4. *Calls upon* all States, including States non-members of the United Nations, to act strictly in accordance with the provisions of the present resolution notwithstanding any contract entered into or licence granted before the date of the present resolution; [...]
5. *Decides* that, notwithstanding paragraphs 4 through 8 above, nothing in the present resolution shall prohibit assistance to the legitimate Government of Kuwait, and calls upon all States:
 - a. To take appropriate measures to protect assets of the legitimate Government of Kuwait and its agencies;
 - b. Not to recognize any regime set up by the occupying Power; [...]

B. Security Council Resolution 665 (1990)

[Source: UN Doc. S/RES/665 (August 25, 1990). Available on [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/665\(1990\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/665(1990))]

The Security Council,

[...],

Having decided in resolution 661 (1990) to impose economic sanctions under Chapter VII of the Charter of the United Nations, [...]

Deploring the loss of innocent life stemming from the Iraqi invasion of Kuwait and determined to prevent further such losses,

Gravely alarmed that Iraq continues to refuse to comply with resolutions 660 (1990), 661 (1990), 662 (1990) and 664 (1990) and in particular at the conduct of the Government of Iraq in using Iraqi flag vessels to export oil,

1. *Calls upon* those Member States co-operating with the Government of Kuwait which are deploying maritime forces to the area to use such measures commensurate to the specific circumstances as may be necessary under the authority of the Security Council to halt all inward and outward maritime shipping in order to inspect and verify their cargoes and destinations and to ensure strict implementation of the provisions related to such shipping laid down in resolution 661 (1990);
2. *Invites* Member States accordingly to co-operate as may be necessary to ensure compliance with the provisions of resolution 661 (1990) with maximum use of political and diplomatic measures, in accordance with paragraph 1 above; [...]

C. Security Council Resolution 666 (1990)

[Source: UN Doc. S/RES/666 (September 13, 1990). Available on [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/666\(1990\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/666(1990))]

The Security Council,

Recalling its resolution 661 (1990), paragraphs 3(c) and 4 of which apply, except in humanitarian circumstances, to foodstuffs,

Recognizing that circumstances may arise in which it will be necessary for foodstuffs to be supplied to the civilian population in Iraq or Kuwait in order to relieve human suffering,

Noting that in this respect the Committee established under paragraph 6 of that resolution has received communications from several Member States,

Emphasizing that it is for the Security Council, alone or acting through the Committee, to determine whether humanitarian circumstances have arisen, [...]

Acting under Chapter VII of the Charter of the United Nations,

1. *Decides* that in order to make the necessary determination whether or not for the purposes of paragraph 3(c) and paragraph 4 of resolution 661 (1990) humanitarian circumstances have arisen, the Committee shall keep the situation regarding foodstuffs in Iraq and Kuwait under constant review; [...]
2. *Requests*, for the purposes of paragraphs 1 and 2 of this resolution, that the Secretary-General seek urgently, and on a continuing basis, information from relevant United Nations and other appropriate humanitarian agencies and all other sources on the availability of food in Iraq and Kuwait, such information to be communicated by the Secretary-General to the Committee regularly;
3. *Requests further* that in seeking and supplying such information particular attention will be paid to such categories of persons who might suffer specially, such as children under 15 years of age, expectant mothers, maternity cases, the sick and the elderly;
4. *Decides* that if the 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 or

Kuwait in order to relieve human suffering, it will report promptly to the Council its decision as to how such need should be met;

5. *Directs* the Committee that in formulating its decisions it should bear in mind that foodstuffs should be provided through the United Nations in co-operation with the International Committee of the Red Cross or other appropriate humanitarian agencies and distributed by them or under their supervision in order to ensure that they reach the intended beneficiaries;
6. *Requests* the Secretary-General to use his good offices to facilitate the delivery and distribution of foodstuffs to Kuwait and Iraq in accordance with the provisions of this and other relevant resolutions;
7. *Recalls* that resolution 661 (1990) does not apply to supplies intended strictly for medical purposes, but in this connection recommends that medical supplies should be exported under the strict supervision of the Government of the exporting State or by appropriate humanitarian agencies.

Discussion

1.
 - a. Is the UN Security Council bound to respect IHL?
 - b. As it is the individual UN Member States that carry out UN Security Council decisions, are not those individual States party to the Conventions and Protocols bound to respect IHL? Or is obedience first owed to UN Security Council decisions?

[See UN Charter (available on <http://www.un.org/en/documents/charter/index.shtml>), Art. 25: "The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter."]

Do the obligations under the UN Charter not take precedence?

[See UN Charter, Art. 103: "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail."]

Yet must it not be presumed that measures under the UN Charter, which are part of *jus ad bellum*, are to be implemented consistently with *jus in bello*?

1. Does an armed conflict even exist in this case to such an extent that IHL applies? Which are the parties to the conflict? Is the UN a party to the conflict?
2.
 - a. Does international law regulate the imposition of sanctions? Assuming that IHL applies, does it limit the use of sanctions? (GC IV, Art. 23; P I, Art. 70)
 - b. Are the sanctions here consistent with IHL? Is your reply the same if, as a result of the long-term imposition, the sanctions financially weaken the State so much that it cannot provide for the food and medical needs of its people?
 - c. Should not an attempt be made to first interpret Security Council resolutions in a manner consistent with IHL? Was the language of Resolution 661 sufficiently clear and comprehensive to avoid any violation of IHL? Was the clarification in Resolution 666 necessary?
3.
 - a. Are such sanctions an effective means of achieving the objectives of the UN Security Council? Will

it influence the authorities? What are the advantages and drawbacks of such sanctions?

- b. Even if effective, are the sanctions not a form of collective punishment imposed upon innocent people? Does IHL prohibit such collective punishment? (GC IV, Art. 33) Should such types of collective punishment be prohibited? Yet are not individuals always going to be affected when action is taken at the international level, i.e., between States? Does the implementation of *jus ad bellum* not necessarily occur at inter-State level? Which alternatives would you propose?
- 4. a. Are the restrictions on shipping imposed by UN Security Council Resolution 665 permitted under international law? Specifically under IHL? (GC IV, Art. 23; P I, Art. 70; San Remo Manual on International Law Applicable to Armed Conflicts at Sea, Arts 93-104 [See San Remo Manual on International Law Applicable to Armed Conflicts at Sea])
b. Does UN Security Council Resolution 665 create a blockade? If so, what limitations are there on blockades? Do the UN Security Council directives in the above resolutions violate these limitations? (San Remo Manual on International Law Applicable to Armed Conflicts at Sea, Arts 93-104 [See San Remo Manual on International Law Applicable to Armed Conflicts at Sea])
c. Is the proportionality referred to in para. 1 of Resolution 665 the same as understood in *jus in bello*? In *jus ad bellum*? Or is it a mixture of both?
- 5. a. Should humanitarian organizations such as the ICRC provide the information requested in para. 3 of Resolution 666?
b. Under IHL should “foodstuffs (...) be provided through the United Nations in co-operation with the International Committee of the Red Cross or other appropriate humanitarian agencies and distributed by them or under their supervision in order to ensure that they reach the intended beneficiaries”, as stated in para. 6 of Resolution 666? (GC IV, Art. 23; P I, Art. 70)