

IRAQ, SANCTIONS AND SECURITY: A CRITIQUE

REEM BAHDI*

“Legal interpretation takes place in the field of pain and death.”¹

Women’s pain and death blurs the distinction between war and peace. Women are disproportionately starved, attacked physically, emotionally and psychologically, and killed during both war and peace. This paper focuses on the sanctions imposed against Iraq by the United Nations Security Council (“Security Council”) in response to Saddam Hussein’s invasion of Kuwait in 1990 and the on-going purported threat posed to international peace and security by the Iraqi regime.² Intended as a humane alternative to war, the sanctions have nonetheless lead to such high levels of death and suffering, particularly among women and children, that commentators have labeled them “genocide,”³ a “medieval military siege,”⁴ and “a humanitarian disaster comparable to the worst catastrophes of the past decades.”⁵ Not surprisingly, critics of the Security Council have turned a plethora of human rights and humanitarian instruments against the sanctions regime.

However, both the Security Council and its critics employ a fragmented definition of “security” that focuses on political leaders and military choices and assumes that security and human rights must be traded off against each other. Consequently, neither side of the debate concerning the sanctions regime fully explores whether “security” can be achieved through, as opposed to limited by, an emphasis on human rights. This fragmented definition of security has prevented the Security Council from duly regarding the human rights implications

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* Director of the Women’s Human Rights Resources project at the University of Toronto (www.law-lib.utoronto.ca/diana/mainpage.html). The author would like to thank Kent Roach, Nicholas Petk and David Dyzenhaus for their helpful suggestions, Marylin Raisch for her research advice, and the journal editors for their editorial assistance.

1. Robert M. Cover, *Violence and the Word*, 95 YALE L.J. 1601, 1601 (1986).
2. Sanctions were first imposed pursuant to Resolution 661 of August 6, 1990. See S.C. Res. 661, U.N. SCOR, 46th Sess., 2932nd mtg. ¶ 20, U.N. Doc. S/RES/661 (1990); see also S.C. Res. 687, U.N. SCOR, 46th Sess., 2981st mtg. ¶ 20, U.N. Doc. S/RES/687 (1991), available at <http://www1.umn.edu/humanrts/peace/docs/scres687.html> (last visited May 6, 2002).
3. Ramsay Clark, *Fire and Ice*, in CHALLENGE TO GENOCIDE: LET IRAQ LIVE 3, 26 (1998).
4. Hans Koechler, *Ethical Aspects of Sanctions in International Law: The Practice of Sanctions Policy and Human Rights*, in DEMOCRACY AND THE INTERNATIONAL RULE OF LAW: PROPOSITIONS FOR AN ALTERNATIVE WORLD ORDER 5 (1995), available at <http://i-p-o.org/sanctp.htm> (last visited May 5, 2002).
5. Marc Bossuyt, *Adverse Consequences of Economic Sanctions and the Enjoyment of Human Rights*, U.N. Economic and Social Council, 52nd Sess., Agenda Item 12, ¶ 63, U.N. Doc. E/CN.4/Sub.2/2000/33 (2000), available at <http://www.globalpolicy.org/security/sanction/unreports/bossuyt.htm>.

of its policies, while also preventing the Security Council's critics from properly reconciling the quest for human rights with Iraq's capacity to produce and deploy weapons of mass destruction. In response, this paper suggests the need for a more holistic understanding of "security" that includes respect for human rights as both a component of and a means toward greater security, including military security.

I. CRIME AND PUNISHMENT: THE INVASION OF KUWAIT AND THE SANCTIONS REGIME

The story of Iraq's crime and punishment is well known in its broad outline. On August 2, 1990, Iraq invaded Kuwait. That same day, the Security Council passed Resolution 660, calling for Iraq's immediate withdrawal from Kuwait. On August 6, 1990, the Security Council passed Resolution 661, an order for comprehensive trade, financial and military embargo of Iraq with the exception of certain limited humanitarian provisions. It also created the "661 Committee" or the "Sanctions Committee" to oversee the resolution.⁶ A coalition of twenty-six countries under American command went to war against Iraq in January 1991; this would prove to be the first of a series of military raids on Iraqi soil. Throughout the fighting, tons of bombs, including a reported 315 tons of depleted uranium,⁷ were dropped on Iraq; electrical stations and water purification stations were bombed as military targets, and thousands of civilians were killed.⁸ A United Nations investigation sent to Iraq shortly after the bombing called the situation, "'near apocalyptic' and 'concluded that life had been reduced to a 'pre-industrial stage.'"⁹ According to some accounts, as many as 1,600 women and children died on February 13, 1991 alone when they were burned alive during the bombing of the Amariyah Shelter.¹⁰

After six weeks of bombing, Iraq participated in a cease-fire agreement. Security Council Resolution 687 created the UN Special Commission (UNSCOM) to oversee the destruction of Iraq's biological and chemical weapons and the International Atomic Energy Agency (IAEA) to monitor Iraq's nuclear capabil-

6. See United Nations Office of the Iraq Programme, Implementation of Oil-for-Food: A Chronology, at <http://www.un.org/Depts/oip/background/chron.html> (last visited Apr. 15, 2002).

7. Doug Rokke, Depleted Uranium: Uses and Hazards 5, available at <http://www.iacenter.org/depleted/duupdate.htm> (last visited Apr. 3, 2002).

8. The exact number remains contested. Compare Louise Cainkar, *Desert Sin*, in BEYOND THE STORM: A GULF CRISIS READER 338-45 (Phyllis Bennis & Michel Moushabec, eds., 1991) (putting the number as high as 11,000 to 24,000 and pointing out the difficulties of arriving at exact figures), with Human Rights Watch, *Needless Deaths In The Gulf War: Civilian Casualties During the Air Campaign and Violations of the Laws of War 13* (1991) (indicating that the organization can only give a partial account of civilian casualties and therefore not providing a precise number but nonetheless is creating an impression that casualties did not extend beyond a few thousand), at <http://www.hrw.org/reports/1991/gulfwar/> (last visited May 5, 2002).

9. John Quigley, *The United Nations Security Council: Promethean Protector or Helpless Hostage?*, 35 TEX. INT'L L.J. 129, 153 (2000) (quoting *Excerpts from U.N. Report on Need for Humanitarian Assistance in Iraq*, N.Y. TIMES, Mar. 23, 1991, at A5); see also Paul Lewis, *U.N. Survey Calls Iraq's War Damage Near-Apocalyptic*, N.Y. TIMES, Mar. 22, 1991, at A1.

10. Cainkar, *supra* note 8, at 342.

ity.¹¹ In 1995, Resolution 986 modified the embargo with the Oil-for-Food program that permitted Iraq to sell a controlled quantity of oil so that proceeds from sales could be used, in prescribed proportions, to fund the purchase of humanitarian goods, pay the salaries of United Nations officials charged with distributing humanitarian supplies or monitoring Iraq's disarmament, and pay reparations to Kuwait.¹² The program was intended as a temporary measure but has been extended to this day with various modifications. In its original form, the program required that all contracts relating to goods entering Iraq be screened by the Office of the Iraq Program in New York, which usually circulated the request to the Security Council's Sanctions Committee for consideration. However, Security Council resolution 1409, adopted on May 14, 2002, introduced the Goods Review List (GRL) and a new set of procedures for the processing and approval of contracts for civilian supplies and equipment. Under the new procedures only contracts that contain GRL items would be sent to the 661 Committee for consideration.¹³ The Sanctions Committee is authorized to veto any contracts related to items with potential military use or "dual use."¹⁴ Where it questions an item's potential or intended use, the Committee has the authority to place the contract on hold pending further action or information. Although the United Nations has not placed Iraq under total embargo, the sanctions applied against that nation represent the most comprehensive and complicated scheme ever imposed on a country by the United Nations.¹⁵

II. PUNISHMENT AS CRIME: WOMEN AND THE IMPACT OF SANCTIONS

Mohamed Ghani, the famous Iraqi sculptor, has described the devastating and all pervasive nature of the sanctions regime in both words and art. Iraq, Ghani observes,

[I]s being killed, far beyond food rationing; it is physical, mental, emotional and intellectual. It is the very expression of nothingness; all these people die waiting, for nothing. . . These families waiting, these women alone with their children, their heads bowed. Passivity every day of the week. Reflection. Sadness. Examine my sculptures representing people looking at an empty box: it is our-

11. UNSCOM was replaced by the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) in December 1999.

12. United Nations Office of the Iraq Programme, *Oil-for-Food – The Basic Facts: 1996 to 2002*, at <http://www.un.org/Depts/oip/background/basicfacts.html> (last visited June 22, 2002).

13. *Id.*; see also S.C. Res. 1409, U.N. SCOR, 4531st mtg. ¶ 20, U.N. Doc. S/RES/1409 (2002), available at <http://www.un.org/Docs/scres/2002/res1409e.pdf>.

14. See United Nations Sanctions Secretariat, Department of Political Affairs, *A Brief Overview of Security Council Applied Sanctions 7* (November 1999), available at <http://www.un.org/sc/committees/sanctions/overview.pdf> (last visited June 22, 2002) (surveying the resolutions related to the sanctions against Iraq and observing that Resolution 687 "represents one of the most complex and far-reaching set of decisions ever taken by the Council").

15. Compare the sanctions imposed against Iraq with those imposed against Apartheid South Africa in 1977 pursuant to Security Council Resolution 418 which prohibited the trade of arms and military supplies to South Africa but never established a comprehensive sanctions regime. Sanctions have also been imposed by the Security Council on several occasions including those brought against Libya, Somalia, Angola, Rwanda, Liberia, Sudan, Sierra Leone, The Federal Republic of Yugoslavia, Afghanistan and South Africa. See generally *id.* at 43.

selves, the Iraqis, we are staring at life, this vacuum, this empty box, our life under the embargo.¹⁶

There is no doubt that life under “the embargo” has visited destruction upon the Iraqi people. To date the actual death toll remains contested.¹⁷ Yet, it is clear that few have been spared the negative consequences of sanctions. At least one commentator observed that “sanctions against Iraq have killed more people than the two atomic bombs dropped on Japan.”¹⁸ In 1995, the United Nations Secretary-General worried that “no more than 4% of the medicines needed in Iraq were available during the past five months.”¹⁹ As late as November 2001, the Secretary-General warned that basic and higher education in Iraq continue to be affected by severe shortages of teaching materials and other essential resources.²⁰

As is often the case, women pay a high price under the embargo in all aspects of their lives.²¹ In a few short pages one can only provide an impression of the suffering endured by women. Clearly, women’s physical health has deteriorated. A recent survey of reproductive health states that,

Up to 95% of all pregnant women in Iraq suffer from anemia and thus will give birth to weak, malnourished infants. Most of these infants will either die before reaching the age of five due to lack of food and basic medicines or will be permanently scarred, either physically or mentally.²²

Moreover, the maternal mortality rate per 100,000 live births has increased from 160 to 294, making it the leading cause of death among Iraqi women of child-bearing age.²³ Rising maternal mortality rates reflect a more widespread problem: people in Iraq are dying from diseases that were previously treatable because the Iraqi health care system has collapsed in the shadow of the sanctions. Accordingly, Iraqi women routinely watch their children die from causes that, before 1991, were virtually unknown (such as cancers linked by some scientists to depleted uranium exposure), or easily treatable (such as diarrhea).²⁴

Sanctions have also placed a social toll on women. Not only are they facing the physical, psychological, and emotional trauma that come with caring for their sick and dying children, but they are also increasingly burdened with the consequences of a debilitated economy and rising social conservatism. Early

16. Rachad Antonious & Raymond Legault, *Iraq: Sanctions That Kill*, available at <http://www.casi.org.uk/discuss/2000/msg00500.html> (last visited May 5, 2002).

17. See Cankar, *supra* note 8.

18. Roger Norman, *A Human Rights Assessment of Sanctions: The Case of Iraq, 1990-1997*, in UNITED NATIONS SANCTIONS: EFFECTIVENESS AND EFFECTS, ESPECIALLY IN THE FIELD OF HUMAN RIGHTS, A MULTI-DISCIPLINARY APPROACH 33 (Willem J.M. van Genugten & Gerard A. de Groot eds., 1999).

19. *Report of the Secretary General Pursuant to Paragraph 11 of Resolution 986*, U.N. SCOR, 52nd sess. ¶ 49, U.N. Doc. S/1997/419 (1997).

20. *Report of the United Nations Secretary General Pursuant to Paragraph 5 of Resolution 1360*, U.N. SCOR, 56th sess. ¶ 91, U.N. Doc. S/2001/1089 (2001).

21. Anne Orford, *The Politics of Collective Security*, 17 MICH. J. INT’L L. 373, 379-80 (1995-96).

22. Rania Masri, *The Women and Children of Iraq Are Under Siege*, THE PRISM (March 1997), at <http://www.ibiblio.org/prism/Mar97/iraq.html> (last visited Apr. 15, 2002).

23. Antonious & Legault, *supra* note 16, at 24.

24. *Id.* at 26-29.

marriage has resurfaced in rural parts of Iraq as teenage girls are married off to reduce the number of mouths a family must feed.²⁵ Moreover, young girls are withdrawn from the education system—such as it is—because families prefer to educate boys who have a better chance of securing future employment.²⁶ Not surprisingly, the United Nations International Children’s Emergency Fund, UNICEF, reports that Iraqi female literacy rates have regressed over the last decade.²⁷ Finally, women have lost their jobs and abandoned their quests for higher education in the face of their rising poverty.

Iraq’s relative prosperity prior to the imposition of the sanctions makes their effect all that more tragic. Before 1990, The United Nations Educational, Scientific and Cultural Organization, UNESCO, had honored Iraq for its active promotion of education,²⁸ and the World Health Organization reported that Iraq’s “[h]ealth conditions were comparable to those of middle or high-middle income countries.”²⁹ Malnutrition was virtually unknown, access to healthcare, education, drinking water and electricity was almost universal thanks to government infrastructure investments in the 1960’s and 1970’s.³⁰ Sanctions, however, have helped turn back the hands of time.

III. AUTHORITY FOR THE SANCTIONS REGIME

Chapter VII of the United Nations Charter grants the Security Council the legal right to impose sanctions as a means of securing compliance from a nation state.³¹ In particular, Article 41 recognizes that the Security Council can effect the “complete or partial interruption of economic relations.” Moreover, Article 39 links sanctions to international peace and security. Article 39 provides that, “[t]he Security Council shall determine the existence of any threat to the peace, breach of peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Article 41 and 42 to maintain or restore international peace and security.”

Arguments advanced by proponents and critics of the sanctions line up with different interpretations of the United Nations Charter and the powers it grants to the Security Council under Chapter VII. Political realists insist that the Security Council holds virtually unfettered discretion under Chapter VII.³² They

25. *Id.* at 31.

26. *Id.* at 31.

27. *Id.* at 21.

28. Ransi Masri, *Situation Analysis of Children and Women in Iraq* (Apr. 30, 1998), at <http://www.iacenter.org/unsit.htm> (last visited Apr. 3, 2002) (quoting and summarizing a UNICEF report by the same name).

29. Dr. W. Kreisel, *Health Situation in Iraq 2* (Feb. 26, 2001), available at http://www.embargos.de/irak/sanctions/ep_hearing_who.pdf (last visited Apr. 3, 2002). This report was presented at the Hearing “Iraq and the International Community” of the Committee on Foreign Affairs, Human Rights, Common Security, and Defense Policy. Dr. Kreisel is the Executive Director of the World Health Organization Office of the European Union.

30. *Id.*

31. U.N. CHARTER arts. 9-22.

32. See generally Martti Koskenniemi, *The Police In the Temple: Order, Justice and the U.N. – A Dialectical View*, 6(3) E.J.I.L. 325, 327 (1995) (setting out the parameters of the interpretive debate between the realists and their opponents over the Security Council’s normative and institutional pow-

rely on Article 24(2) of the Charter, which stipulates that the Security Council “shall act in accordance with the Purpose and Principles of the United Nations.” These are defined within Chapter I of the Charter itself. Those who adopt the political realist position sometimes argue that the purposes and principles are enumerated in order of importance.³³ Therefore, the first principle, which refers

ers). Significantly, the various Security Council Resolutions in relation to Iraq do not point to human rights or humanitarian norms that might limit the sanctions regime.

33. See Inger Osterdahl, THREAT TO THE PEACE: THE INTERPRETATION BY THE SECURITY COUNCIL OF ARTICLE 39 OF THE UN CHARTER 83 (1999) (noting that the drafters of the Charter clearly intended the goal of maintaining international peace and security to be superior to the goal of encouraging respect for human rights but also arguing that the human rights may have now attained a higher status); U.N. CHARTER arts. 1-2. The text of these articles is below:

Article 1

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a center for harmonizing the actions of nations in the attainment of these common ends.

Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.
2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.
3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.
5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.
6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.
7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

Id.

to the maintenance of international peace and security, constitutes the most important objective of the United Nations, and also the Security Council. In short, the Charter dictates that order prevails over human rights. They also point out that Article 103 of the Charter stipulates that the Charter shall take priority over all other international instruments.³⁴ The combined interpretive effect of these provisions is that the Security Council need not be hindered by human rights considerations in the pursuit of international peace and security.³⁵

In contrast, some commentators insist that international human rights and humanitarian law bind the Security Council. They argue that the United Nations was created to promote respect for human rights and conclude that that Article 1 of the Charter does not create a hierarchy among its enumerated purposes and principles. Hence, the second purpose, “promoting and encouraging respect for human rights” is equally as important as maintaining international peace and security.³⁶ Critics of the Security Council thus charge the Council must be held accountable for the human rights and humanitarian suffering occasioned by the sanctions imposed on Iraq, and, furthermore, that the Security Council’s powers to act against Saddam Hussein are limited by these other human rights and humanitarian principles.³⁷

IV. THE ZERO-SUM MODEL OF SECURITY

Despite their differences, the arguments advanced by opposing sides of the sanctions against Iraq often share a *problematique*. They both adopt a particular understanding of security that is ultimately statist in its orientation and focuses attention on political leaders and military means. Proponents of the sanctions conclude that the suffering occasioned by the sanctions represents an unfortunate but necessary ingredient in the plan to contain Iraq’s capacity to produce weapons of mass destruction. They point to Iraq’s continued obstruction of UNSCOM inspections and monitoring activities, and information received from Husayn Kamil Hasan al-Majid, Saddam’s son-in-law, as evidence of Saddam Hussein’s willingness to deploy weapons of mass destruction.³⁸ By contrast, critics of the sanctions charge that the price for defeating Saddam Hussein and containing Iraq’s capacity to produce weapons of mass destruction is too high.³⁹

Yet, both sides of the debate implicitly accept that the term “security” means freedom from foreign military-style attacks.⁴⁰ That is, few question the

34. Paul Conlon, *Lessons From Iraq: The Functions of the Iraq Sanctions Committee as a Source of Sanctions Implementation Authority and Practice*, 35 VA. J. INT’L L. 633, 665 (1995). Conlon does not necessarily take this position.

35. Koskeniemi, *supra* note 32 at 327.

36. *Id.*

37. Bossuyt, *supra* note 5, at ¶¶ 18-38.

38. U.S. DEP’T OF STATE, IRAQ WEAPONS OF MASS DESTRUCTION PROGRAMS 2 (1998), available at http://www.state.gov/www/regions/nea/iraq_white_paper.html (last visited Apr. 3, 2002).

39. See, e.g., IRAQ UNDER SIEGE: THE DEADLY IMPACT OF SANCTIONS AND WAR (Anthony Arnone ed., 2000).

40. See, e.g., Erica Cosgrove, *The Sanctions Dilemma and the Case of Iraq: Human Rights and Humanitarian Challenges To The Use of Multilateral Economic Sanctions*, 9 WINDSOR REV. LEGAL & SOC. ISSUES 65 (1999), available at <http://www.strakejesuit.org/fac/auzenne/sanctionslj2.htm> (last visited

premise that security and human rights must be traded off against each other; they do not consider whether security can be achieved through, as opposed to limited by, an emphasis on human rights. This zero-sum definition of security has produced a lose-lose scenario. On one hand, the Security Council has not fully recognized the human rights implications of its policies. On the other hand, the Council's human rights critics have not fully addressed the nature or extent of the threat presented by Iraq to international peace and security. As a result, the debate over policies options with respect to Iraq takes place on two tracks that remain largely isolated from each other.⁴¹

V. THE FOCUS ON LEADERS

Theorists generally attribute the zero-sum understanding of security to Thomas Hobbes' social contract theory.⁴² Hobbes argued that free, rational individuals prefer order to chaos and will trade in their freedom as a means of overcoming chaos and obtaining security. This quest for collective security necessarily requires a compromise on individual rights. By implication, the greater the security needs, the higher the trade off.⁴³ This simple premise has had a profound impact on security analysis. First, the Hobbesian premise that security involves a trade-off between individual rights and collective security has resulted in the confluence of individual security and state security.⁴⁴ Conse-

Apr. 3, 2002). *But see* Orford, *supra* note 21 (challenging the statist approach to security, thus presenting an exception to this usually two-sided debate).

41. See Richard Bilder & David Malone, Note, *Iraq: No Easy Response to "The Greatest Threat,"* 95 AM. J. INT'L L. 235, 245 (2001) (reviewing RICHARD BUTLER, *THE GREATEST THREAT: IRAQ, WEAPONS OF MASS DESTRUCTION, AND THE CRISIS OF GLOBAL SECURITY* (2000) and pointing out that Richard Butler, former head of UNSCOM, tends to denounce those who disagree with his approach as pawns of Iraq).

42. Mariana Valverde, *Governing Security, Governing Through Security*, in *THE SECURITY OF FREEDOM* 83 (Ronald J. Daniels et al. eds., 2001).

43. THOMAS HOBBS, *LEVIATHAN* (Penguin Classics 1968) (1651). In particular, see Chapter XVII, "Of The Causes, Generation, And Definition Of A Commonwealth," where Hobbes describes the Leviathan:

I authorise and give up my right of governing myself to this man, or to this assembly of men, on this condition; that thou give up, thy right to him, and authorise all his actions in like manner. This done, the multitude so united in one person is called a COMMONWEALTH; in Latin, CIVITAS. This is the generation of that great LEVIATHAN, or rather, to speak more reverently, of that mortal god to which we owe, under the immortal God, our peace and defence. For by this authority, given him by every particular man in the Commonwealth, he hath the use of so much power and strength conferred on him that, by terror thereof, he is enabled to form the wills of them all, to peace at home, and mutual aid against their enemies abroad. And in him consisteth the essence of the Commonwealth; which, to define it, is: one person, of whose acts a great multitude, by mutual covenants one with another, have made themselves every one the author, to the end he may use the strength and means of them all as he shall think expedient for their peace and common defence.

44. See Valverde, *supra* note 42, at 83-84 (discussing Hobbes); see also Orford, *supra* note 21, at 398 (also discussing Hobbes). See generally Juan. E. Mendez, *Symposium on International Security: Forward, Ethical and Humanitarian Concerns Add New Dimension To International Security In The Post-Cold War World*, 15 NOTRE DAME J.L. ETHICS & PUB. POL'Y 383 (2001) (discussing the implications of social contract theory on international relations and security).

quently, security analysts direct attention largely towards the actions of state representatives and political leaders.⁴⁵

The sanctions against Iraq reveal the extent to which the Hobbesian inspired focus on states and their leaders pervades international actions. Proponents of the Security Council's actions against Iraq judge the utility of the sanctions regime largely in terms of their ability to contain Saddam Hussein's capacity to produce weapons of mass destruction.⁴⁶ Controlling Iraq's leaders remains the Security Council's overriding priority, even in the face of compelling humanitarian need. Hence, vital humanitarian goods, such as children's vaccines, have been placed on hold by the Sanctions Committee as possible dual use items and therefore prohibited from entering the country even where their use in the development of weapons of mass destruction is questionable and their humanitarian value high.⁴⁷

Second, Hobbesian approaches to security emphasize military style responses to threats because the military represents the traditional means employed by sovereigns to promote collective security.⁴⁸ True to the Hobbesian model, institutions set up to implement the sanctions regime in Iraq focus on the military consequences of their decisions. There is little institutional space within the Security Council for monitoring and addressing the human rights impact of the sanctions.⁴⁹

Significantly, a number of high-ranking and long-serving United Nations officials charged with administering humanitarian programs in Iraq resigned their offices because they felt morally obliged to condemn the sanctions regime and its attendant humanitarian consequences but concluded that they could not do so within the confines of the United Nations.⁵⁰ While the Security Council

45. Valverde, *supra* note 42, at 90.

46. Perhaps this point is best illustrated by a comment made by then U.S. Secretary of State, Madeline Albright, on *60 Minutes*. When asked if the sanctions justified the death of half a million Iraqi children, Albright responded, "[T]he price is worth it." Andrew K. Fishman, *Comment: Between Iraq and a Hard Place: The Use of Economic Sanctions and Threats to International Peace and Security*, 13 EMORY INT'L L. REV. 687, 687 (1999) (quoting interview); see also U.S. DEP'T OF STATE, *supra* note 38 (noting that "the United Nations established sanctions to prevent the purchase of equipment and materials needed to reconstitute Baghdad's WMD [Weapons of Mass Destruction] program").

47. See WORLD HEALTH ORGANIZATION, *WHO tried again to reduce holds*, WHO-IRAQ NEWSLETTER, Jan. 2001, at 2 (detailing the difficulties caused by the process provided under the sanctions regime for obtaining approval of humanitarian goods), available at <http://www.who.int/disasters/repo/6645.doc> (last visited May 5, 2002). Benon V. Sevan, Statement at the 221st meeting of the U.N. Security Council Committee Established by Res. 661 (1999) (Jul. 12, 2001) (reviewing the tortuous history of an urgent request for a blood gas analyzer), available at <http://www.un.org/Depts/oip/background/latest/bvs010712.html> (last visited May 29, 2001).

48. See Valverde, *supra* note 42, at 84-86; see also Orford, *supra* note 21, at 381 (commenting on the focus on leaders and the military: "[t]o treat the decision to impose sanctions as a decision involving only the U.N. and recalcitrant governments ignores the role all civilians, and particularly women, are forced to play in order to survive these decisions").

49. At least some have become uncomfortable with this reality. United Nation's Security Council Working Group on Sanctions, Draft Report 2 (Feb. 14, 2001), available at <http://www.cam.ac.uk/societies/casi/info/scwgs140201.html> (last visited on Dec. 5, 2001).

50. Press Release, United Nations Humanitarian Coordinator For Iraq 3 (Mar. 1, 1999), at <http://www.globalpolicy.org/security/sanction/irq3-1.htm> (last visited May 5, 2002). Hans Van Sponeck, the United Nations Humanitarian Coordinator for Iraq who issued this press briefing, re-

does receive reports from other United Nations institutions regarding the human rights situation in Iraq, it is clear that these reports have a relatively minor impact on the processes and institutional priorities of the Security Council. For example, the United Nations Secretary General's various reports to the Security Council spanning several years read like a hauntingly familiar script: the same problems resurface year after year.⁵¹

Even the Oil-for-Food program does not alter the conclusion that the Security Council focuses largely on the military objective of limiting Iraq's capacity to produce weapons of mass destruction without adequately considering the human rights implications of its decisions for Iraqi civilians. First, the Oil-for-Food program is wracked with problems and is not fully delivering on its promise to mitigate the impact of the sanctions.⁵² The massive bureaucracy established to administer the sanctions regime represents a poor replacement for a functioning economy. Goods under the program are slow to arrive in Iraqi markets in part because the programme requires that all foodstuffs be subject to a series of inefficient and cumbersome inspection measures before it can be distributed.⁵³ Moreover, on occasion suppliers ship defective, expired or spoiled goods to Iraq, but Iraqi officials have no recourse under the Oil-For-Food programme and cannot return such merchandise.⁵⁴ At other times, essential items received under the programme are not distributed, often because Iraq lacks the means to deliver them.⁵⁵ To further exacerbate the bureaucratic inefficiencies, Iraq has not always been able to fulfill its quota of oil under the Oil-for-Food program because its refinery infrastructure has been crippled by war and sanctions.⁵⁶

signed from his post in protest of the humanitarian impact of the sanctions. Van Sponeck resigned on March 31, 1999. His predecessor, Dennis Halliday, resigned in protest in 1998.

51. Ongoing difficulties include the complexities of the paperwork required, serious and difficult delays in getting urgent items off the 661 Committee's hold list, problems in distributing humanitarian goods due to lack of infrastructure, inadequate medical supplies, and unavailability of parts to revitalize water purification and electrical generation plants. See, e.g., *Report of the Secretary General Pursuant to Paragraph 5 of Resolution 1360*, *supra* note 20, ¶ 3; see generally *Report of the Secretary General Pursuant to Paragraph 7 of Resolution 1143*, U.N. Doc. S/1998/99 (1997); *Report of the Secretary-General Pursuant to Paragraph 11 of Resolution 986*, U.N. Doc. S/1997/419 (1996).

52. Sevan, *supra* note 47.

53. Antonius & Legault, *supra* note 16, at 39. (Antonius and Legault rely on an interview with George Somerwill, the information officer with the United Nations Office of the Humanitarian Coordinator for Iraq, who was interviewed during a fact finding mission conducted between January 4–15, 2000). Sevan, *supra* note 47 (confirming the difficulties in administering the program and pointing out that changes have been implemented while also rejecting Iraqi charges that the program's administrators are to blame and indicating that new procedures are being explored).

54. Antonius & Legault, *supra* note 16, at 40 (noting that it would appear that the same four or five Western and Arab countries take advantage of this situation to unload spoiled goods on Iraq); see also Sevan, *supra* note 47 (confirming that contractors do not always deliver goods as expected but rejecting the suggestion that the program's administrators are to blame).

55. Antonius & Legault, *supra* note 16, at 40.

56. *Id.* at 39. Antonius & Legault point out that Iraq was not able to produce its full quota of oil between February 1998 and August 1999 because of the poor state of its oil industry infrastructure. See also United Nations Office of the Iraq Programme, *Weekly Update (8-14 June 2002)*, at <http://www.un.org/Depts/oip/background/latest/wu020618.html> (last visit June 22, 2002). The update reports that the volume of oil exports for the week of June 8 – 14, 2002, "remains sluggish." As a re-

Furthermore, even if the Oil-for-Food program functioned as intended, it would not constitute an effective response to the suffering resulting from the sanctions. The suffering in Iraq is not simply the result of a shortage of food but also of the lack of clean water and the destruction of the education and health systems.⁵⁷ However, the Security Council has not fully turned its mind to understand how to deal effectively with these issues because it values defeating Saddam Hussein over protecting the Iraqi people.⁵⁸

The third consequence of the Hobbesian trade off between human rights and security is that security analysis remains closeted and specialized.⁵⁹ Human rights are removed from the security equation. Security becomes the exclusive domain of the military and intelligence services; individuals working outside these institutions are perceived as unqualified or incapable of discussing security.⁶⁰ Human rights advocates appear to have internalized this notion. Consequently, when human rights advocates criticize the sanctions imposed against Iraq, they often remain silent about the military objectives that underlie the sanctions regime; they too often fail to analyze in any detail whether Iraq has the capacity to produce weapons of mass destruction, and do not fully discuss whether sanctions ultimately deter military aggression.⁶¹ This silence is unfortunate because it leaves the critics open to the charge that their arguments prove naive and uninformed.

Further, the silence is problematic because it amounts to a concession that security properly belongs to military and intelligence specialists. While the military and intelligence services are honestly concerned with security, they also have a professional bias in favor of military-style and intelligence-type solutions.⁶² Evidence suggests, however, that such solutions may aggravate security

sult, \$2.24 billion in approved humanitarian contracts cannot be processed because of a funding shortfall. *Id.*

57. OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS FOR THE EXECUTIVE COMMITTEE ON HUMANITARIAN AFFAIRS, THE HUMAN RIGHTS IMPACT OF ECONOMIC SANCTIONS ON IRAQ 6, ¶ 12 (Sept. 5, 2000), available at <http://www.cam.ac.uk/societies/casi/info/undocs/sanct31.pdf> (last visited Feb. 26, 2002) [hereinafter *Human Rights Impact of Economic Sanctions in Iraq*].

58. Although items needed for the revitalization of Iraq's infrastructure have been placed on the "fast track" approval list of the 661 Committee, this process is proving inefficient and ineffective. *Report of the United Nations Secretary-General Pursuant to Paragraph 5 of Resolution 1360*, ¶ 65, U.N. Doc. S/2001/1089 (2001). Also, the Secretary-General had pointed to the need to address the water and electrical stations in Iraq and highlighted the "extreme gravity of the situation and its accelerated decline with potentially disastrous consequences" in a number of previous reports to the Security Council. See, e.g., *Report of the Secretary-General Pursuant to Paragraph 7 of Resolution 1143*, ¶ 61, U.N. Doc. S/1998/90 (1997). The impact of the revised procedure adopted in May 2002 pursuant to Security Council Resolution 1409 is yet to be determined. Whatever its benefits, the new procedure cannot substitute for a functioning economy. See *supra* note 13.

59. Valverde, *supra* note 42, at 87.

60. *Id.* at 86.

61. See, e.g., *supra* note 39. While this collection offers an excellent analysis of foreign policy and reviews the effects of the sanctions in good detail, it does not address whether the Iraqi government represents a real threat to the United States. By contrast, some military experts, including Scott Ritter, a former UNSCOM inspector, challenge the claim that Iraq represents a significant military threat to the United States. See, e.g., Jeffrey Donovan, *Iraq: Experts Weapons of Mass Destruction Potential*, in RADIO FREE EUROPE/RADIO LIBERTY (Nov. 29, 2001) available at <http://www.rferl.org/nca/features/2001/11/29112001091513.asp> (last visited May 5, 2002).

62. Valverde, *supra*, note 42, at 87; Bilder & Malone, *supra* note 41, at 243-45.

threats rather than ameliorate them.⁶³ At the very least, the focus on military style solutions limits our capacity to consider creative responses to the Iraqi crisis based on alternative approaches to security that have proved effective elsewhere.⁶⁴

VI. CALLS FOR REFORM: THE IRRATIONAL COMES TO LIGHT

Given the limited meaning of security that guides its relations with Iraq, the Security Council has been driven to irrational results and irrational behavior. First, though Article 41 of the United Nations Charter contemplates sanctions as a humane alternative to military action, the sanctions against Iraq have produced untold suffering and death. Thus, ironically, the people of Iraq have less explicit protection under international law when the Security Council acts in the name of "international peace and security" than when Saddam Hussein engages in war against an enemy. Second, the actions against Iraq are irrational in light of Saddam Hussein's demonstrated willingness to endure the suffering of his people rather than accept political or military defeat.⁶⁵ Third, sanctions are intended to enhance international peace and security, however, they have engendered greater resentment towards the West, particularly the United States, and have heightened Saddam Hussein's popularity in the Middle East. One must question whether these results undermine rather than enhance international peace and security.⁶⁶

Irrationality also pervades the legal debate over the sanctions. Supporters of the sanctions contend that the Security Council is free to act unrestrained under Chapter VII because it is not restrained anywhere else, while critics argue that it is restrained outside of Chapter VII hence it must be restrained within it.⁶⁷ Both sides, thus, are guilty of circular reasoning, and neither side grounded in a definitive article of the Charter.⁶⁸ Finally, irrationality is evident when the Security Council and its member states blame Iraqi leaders exclusively for the suffering of the Iraqi people,⁶⁹ despite evidence indicating blameworthiness of other parties.⁷⁰

63. *Id.* at 238; *see also* Quigley, *supra* note 9, at 140-43.

64. *See, e.g.*, MIKE BROGDEN & CLIFFORD SHEARING, *POLICING FOR A NEW SOUTH AFRICA* (1993).

65. AMNESTY INTERNATIONAL, *ANNUAL REPORT ON THE REPUBLIC OF IRAQ* (1999), at <http://www.amnesty.org/ailib/aireport/ar99/mde14.htm> (last visited May 6, 2002) (detailing human rights abuses by the Iraqi government against residents of Iraq including political executions, expulsion of populations and torture).

66. Bilder & Malone, *supra* note 41, at 241.

67. *See* Cosgrove, *supra* note 40, at 69-79.

68. Koskeniemi, *supra* note 32 at 327 (noting that recourse to the text of the Charter cannot resolve the debate between the "realists" who argue that the Security Council is fettered only by what is politically possible and those who seek out normative limits on the Council's authority. "The purposes and principles are not less determinate than the concept of a threat to peace. Textual constraint is practically non-existent.")

69. *See, e.g.*, United Nations Office of the Iraq Programme, *Oil-for-Food Background Information*, at <http://www.un.org.Depts/oip/backgroundindex.html> (last visited Nov. 22, 2001). The web site of the United Nations Office of the Iraq Programme blames Saddam Hussein for the suffering occasioned prior to the introduction of the Oil-for-Food programme because he allegedly initially refused an offer by the Security Council to sell oil in return for humanitarian aid. There is no indication of the substance nor of the offer or the context in which it was made. *Id.*; *see also*, Interview by

In the end, the sanctions imposed against Iraq may have changed the Security Council more than they have changed the Iraqi leadership. The united front of Security Council members has started to crack as member states like Russia and France and broader United Nations institutions have called for a review of the sanctions against Iraq.⁷¹ Some have even called into question the efficacy of sanctions in general. Analysis of this type is undoubtedly needed as the Security Council increasingly invokes sanctions as the weapon of choice in the post-Cold War era.⁷²

Yet, there is also a need to delve deeper and challenge the very meaning of security at the international level. Such a fundamental examination remains largely absent from international legal commentaries concerning the sanctions against Iraq. The sanctions imposed against Iraq by the United Nations Security Council illuminate the statist elements that dominate international understanding of security. The sanctions also reinforce that international lawyers must unpack and closely examine international law's conception of security in order to better understand the past, evaluate the present, and imagine the future.

Feminists and thinkers across disciplines have challenged the traditional Hobbesian approach to security. Their scholarship has much to offer the debate over the Security Council's sanctions on Iraq. For example, feminists point out that the prevailing definition of security represents another instance of the private-public split in international law that generally concerns itself with actions of leaders over those of non-state actors.⁷³ Thus, for example, international human rights treaties denounce forms of violence such as torture committed by state actors in the so called "public" realm but do not explicitly address the violence visited upon women in their homes at the hands of their husbands and partners.⁷⁴ Criminologists have demonstrated that security and human rights need not stand in opposition, and that the term "security" conceals a diverse array of social and cultural values along with a range of governing, budgetary, political and legal practices.⁷⁵ Peace studies scholars also question who benefits and loses from state-centered models of security.⁷⁶ Human rights lawyers and

Amy Goodman with President Bill Clinton (Nov. 8, 2000) (regarding member states comments on Iraqi leaders), available at <http://www.globalpolicy.org/security/sanction/indexone.html>.

70. The Secretary-General has repeatedly called on both sides to refrain from politicizing the sanctions programme. See *Report Pursuant to Paragraph 5 of Resolution 1360*, ¶ 127, U.N. Doc. S/2001/1089 (2001). This report also confirms that the Iraqi government is not responsible for many of the problems associated with the sanctions regime.

71. *Human Rights Impact of Economic Sanctions on Iraq*, *supra* note 57, ¶¶ 2, 5.

72. Exactly twelve of the fourteen sanctions imposed pursuant to Chapter VII of the United Nations were introduced during or after 1990. U.N. Office of the Spokesman for the Secretary-General, *The Use of Sanctions Under Chapter VII of the U.N. Charter*, at <http://www.un.org/News/oss/sanction.html> (last visited Dec. 5, 2001).

73. Orford, *supra* note 21, at 384; Bernedette Muthien, *Women's Security Is Human Security: Southern Dimension 4*, available at <http://www.copri.dk/copri/ipra/Conf-papers/muthien-genderedsecurity.doc> (last visited May 5, 2002).

74. See, e.g., Joan Fitzpatrick, *The Use of International Human Rights Norms To Combat Violence Against Women*, in *HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES* 532 (Rebecca J. Cook, ed., 1994).

75. Valverde, *supra* note 42, at 90.

76. See, e.g., JOHAN GALTUNG, *PEACE BY PEACEFUL MEANS* (1996).

advocates have pointed out that peace and security differ because the absence of conflict can sublimate an absence of justice that breeds more deadly conflicts in the future.⁷⁷ Sociologists and political scientists point out that national security and international security are inseparable because poverty, human rights violations and environmental degradation give rise to instability and feed international insecurity.⁷⁸

Such approaches are feminist in their orientation because they highlight the consequences of security policy for marginalized groups through a reading of the silences. These approaches are also feminist because they insist upon a fundamental examination of narratives and power structures that sustain the status quo.⁷⁹ In the end, these approaches cast doubt on the claim that human rights and security need necessarily be traded off against each other. Across the board, feminist scholarship points to the need to move beyond military and statist approaches to security towards what can be called “relational security,” or the recognition that security may be cultivated through the promotion of human rights and dignity.

Feminist scholarship proves particularly significant for the Security Council and Chapter VII. The Security Council has begun to operate with an expanded definition of security. For example, it includes human rights violations as a justification for humanitarian interventions under Chapter VII of the United Nations Charter.⁸⁰ The Security Council, however, has not adequately realized the role that human rights play in fashioning solutions in response to Chapter VII threats, just as its critics have not fully come to grips with Saddam Hussein’s willingness to employ weapons of mass destruction.⁸¹

An enhanced understanding of how security can be evaluated and achieved holds institutional, philosophical and doctrinal implications for the Security Council and its critics. If “security” itself consists of an explicit human rights dimension, then one need not engage in the difficult exercise of importing human rights considerations from other parts of the Charter into Chapter VII. Rather, one can see that human rights considerations properly reside in Chapter VII from the start. The duty to “maintain and restore international peace and

77. Juan E. Mendez, *Symposium on Int’l Security: Forward Ethical and Humanitarian Concerns Add New Dimension to Int’l Security in the Post-Cold War World*, 15 NOTRE DAME J.L. ETHICS & PUB. POL’Y 383, 383 (2001).

78. See, e.g., BERTRAND BADIE & MARIE-CLAUDE SMOUTS, *THE WORLD TURNS: SOCIOLOGY OF THE INTERNATIONAL SCENE* (3d ed., 1999).

79. See generally Hilary Charlesworth, *Feminist Methods In International Law*, 93 AM. J. INT’L L. 379 (1999) for a discussion of these feminist techniques.

80. Frederic L. Kirgis, Jr., *The United Nations at Fifty: The Security Council’s First Fifty Years*, 89 AM. J. INT’L L. 506, 516-17 (1995). In practice, however, its humanitarian interventions have proven inadequate and selective, thereby reinforcing that the Council’s commitment to “human security” remains tentative. The difference between humanitarian intervention and an expanded understanding of security is that humanitarian intervention recognizes gross violations of human rights as a trigger for military intervention. An expanded definition of security goes further and recognizes human rights as a means towards peaceful co-existence, including but not limited to military security.

81. Although controversial, The Criminal Tribunals for Rwanda and the Former Yugoslavia may be exceptions because they recognize the need to promote the rule of law as determinants of long-term peace and security.

security” under article 39 and elsewhere in the Charter necessarily requires an examination of how human rights can serve as a means towards greater security, including the security of women and girls.⁸² The task in each case will be in determining how individual rights and military security can best complement each other, and, conversely, how they are in conflict. Of course, this will not prove a simple undertaking in the case of Iraq where massive suffering and weapons of mass destruction co-exist. Part of the challenge lies in creating a common security language that acknowledges the wisdom of both human rights experts and military specialists, and that permits them to speak to each other across their differences within and beyond the United Nations.⁸³

Another part of the challenge lies in bringing more voices to bear on the Security Council’s decision-making,⁸⁴ including the voices of security specialists who understand the efficacy of responses based on horizontal social bonds rather than vertical state powers, and who recognize that security is not a purchasable commodity but a relationship that must be cultivated.⁸⁵ While there is little doubt that those concerned with the traditional statist aspects of security must play a role with respect to Iraq, they should not be the prevailing source of institutional wisdom about how to generate more security in an increasingly interdependent yet divided world.⁸⁶ History demonstrates that the most dramatic threats to security do not come exclusively from states. It is time to look beyond the state and focus directly on individuals in defining both the meaning and the means of security.⁸⁷ Recasting “security” in both statist and human rights terms may be one way towards these goals.

82. I recognize that expanding the definition of security within Chapter VII brings to higher relief the question of whether the Security Council should be subject to review by other international bodies, including the International Court of Justice. See generally Koskenniemi, *supra* note 32 at 327.

83. The Security Council Working Group is part of this project. See Bossuyt, *supra* note 5, ¶¶ 101-09 (making recommendations for ways to improve dialogue amongst international actors involved with the sanctions issue from various perspectives).

84. The Security Council has given more space to women. *Secretary General Calls for Council Action to Ensure Women are Involved in Peace and Security Decisions*, U.N. Doc. SG/SM/7598 (2000). See Hilary Charlesworth & Mary Wood, “Mainstreaming Gender” in *International Peace and Security: The Case of East Timor*, 26 YALE J. INT’L L. 313 (2001), for a critique; see also S.C. Res. 1325, U.N. S.C.O.R., 4213th mtg. U.N. Doc. S/RES/1325 (2000). This Resolution calls on member states to increase the participation of women at the level of peace building and post conflict restructuring. It also requested the Secretary General of the United Nations to expand the role of women in all relevant United Nations field activities including, but not limited to, human rights monitoring and military observer missions. Finally, it urged greater attention to the impact of war on women. This resolution is highly valuable but its ultimate impact on the Security Council remains questionable. One must also remember that the Security Council is dominated by Western men. Perhaps more importantly, while the Security Council appears, through this resolution, open to increasing the participation of women, it does not appear prepared to subject the notion of “security” to analysis. The dominant conception of security as military security continues to prevail. *Id.*

85. Valverde, *supra* note 42, at 84, 87.

86. *Id.* at 87.

87. Some human rights advocates argue that the state represents the primary barrier to the full realization of human rights. Hence, they regard human rights and state sovereignty as antithetical. I am not necessarily advocating this approach. On the contrary, I suggest caution in this regard. Re-orienting security analysis along a human rights axis in the name of women’s rights does not require a wholesale rejection of states and state sovereignty. Women have always had an ambiguous relationship to sovereignty and states. On the one hand, the sovereign state and international human

VII. CONCLUSION

Feminist legal scholarship as well as scholarship from criminology, political science, sociology, peace studies and other disciplines help reveal that the definition of security that informs the Security Council and Chapter VII of the United Nations Charter makes certain policy options in relation to Iraq appear natural and necessary, while rendering others more obscure. A redefinition of "security" under Chapter VII of the United Nations Charter is needed. Feminists have already spearheaded a redefinition of seemingly unassailable and steadfast legal terms such as "genocide"⁸⁸ and "torture"⁸⁹ so that they better reflect the experiences generated by the interactions of race, gender and other constituents of identity with international law. The term "security" must be unpacked and redefined in the same way. This re-interpretive task remains a crucial but unfinished part of thinking about women's relationship to war.

rights law's emphasis on state responsibility has prevented the realization of women's rights, as sovereignty has proven a treasured shield in the hands of ruthless leaders resistant to international scrutiny. On the other hand, women turn to the state to help secure or protect certain rights, particularly of the social and economic kind, and most recently in the face of rising economic globalization. For some third world women, statehood also represented protection from colonialism, while it remains an elusive but still sought after ideal for others. Hence, it is important not to fall into the trap of equating the demise of state sovereignty with the advance of women's rights and security.

88. *Prosecutor v. Akayesu*, Case No. ICTR-96-4, ¶ 10 (Int'l Crim. Trib. Rwanda, Sept. 2, 1998), available at <http://www.un.org/ictt/english/judgements/akayesu.html> (last visited May 5, 2002).

89. *Id.* ¶ 596, 687.