



Iraq: closing a chapter

by Florence Gaub

With the decision adopted by the United Nations Security Council (UNSC) last Thursday, Iraq has turned an important page in its troubled national history. After 23 years of punitive measures put in place under Chapter VII of the United Nations Charter, the country has now cleared the way to end its pariah status in the international system. This has been achieved by reaching an understanding with Kuwait on how to settle all the outstanding issues which still placed it under the coercive chapter of the UN Charter (Iraq was subject to a number of sanctions, including an arms embargo and an asset freeze on individuals and entities). Since many of the most contentious issues have now been dealt with, the United Nations Security Council decided on 29 June to address the remaining question of missing Kuwaiti persons and property under Chapter VI, i.e. by peaceful means. Iraq's only remaining Chapter VII obligation is the payment to Kuwait of 8.5 billion euros, which is to be completed in 2015 if Iraq maintains the current pace of reimbursements. The UNSC decision therefore closes, both literally and figuratively, a painful chapter in Iraq's history.

Chapter VII or VI?

Chapter VII is the most coercive option available in dealing with threats to peace and acts of aggression, and grants the Security Council a number of possibilities ranging from the introduction of sanctions to the use of force. Today, countries subject to Chapter VII measures include: Libya, Iran, Somalia, Eritrea,

Liberia, Cote d'Ivoire, North Korea and Sudan. States like these are then not only officially viewed as a threat to international peace and security; they also have their sovereignty significantly curtailed.

Moving Iraq from Chapter VII to Chapter VI means that it will resolve the few remaining issues with Kuwait through mediation rather than coercion. Subsequently, assets belonging to the country frozen as a result of Security Council Resolution 1483 will be freed up. This resolution had targeted assets belonging to 89 individuals related to Saddam Hussein's regime and, more importantly, the foreign assets of 208 entities such as several Iraqi banks (including the Central Bank of Iraq), certain ministries, Iraqi Airways and a series of companies active in the agricultural, manufacturing, industrial, media, petrochemical, and construction sector. The total amount of frozen assets is difficult to estimate: scattered across 20 different countries, accounts contain sums ranging from 1 billion to 38 billion euros. Most of these funds originate from the scandal-plagued 'oil for food' programme (which allowed Iraq to sell oil in spite of sanctions in return for medicine, food and other humanitarian supplies). The regime managed to circumvent the programme's limitations through corruption and kick-backs, often transferred to bank accounts abroad.

In addition, Iraq was subject to an arms embargo on ballistic missiles and chemical and biological weapons. However, it is unlikely that any suspension of the embargo would change Iraq's military set-up,



given that it has acceded to or ratified most of the relevant treaties that attempt to control these weapons. It should be noted, however, that the purchase of weapons is not Baghdad's main goal, and the Iraqi government is instead primarily motivated by financial concerns and the symbolic worth of removing itself from Chapter VII.

Where it all began

Iraq became subject to sanctions on 6 August 1990, four days after its invasion of neighbouring Kuwait. UN Security Council Resolution 661, later complemented by Resolution 687 in April 1991, imposed a series of sanctions on Baghdad which included restrictions on free trade, financial dealings, weapons sales, flights and various imports. It also included an inspection system designed to prevent Iraq from obtaining and maintaining ballistic missiles and nuclear, chemical and biological weapons. Most of these sanctions (often criticised for having hurt the population at large more than the regime) were lifted in 2003, after the toppling of Saddam Hussein; but not all were rescinded, due to a number of outstanding disputes between Iraq and Kuwait. UN Security Council Resolution 1483 replaced the punitive measures with asset freezes and a limited weapons embargo which still allowed for Iraq to rebuild its security apparatus with conventional weapons.

Unfortunately, the dispute between the two neighbours could not be settled quickly as it encompassed a number of financial and political files which had remained unresolved for decades. These included the contested border demarcation between the two states, and therefore tapped into a history of state formation under the British Empire. In this context, Iraq has either contested the border as laid out in the first correspondence related to the matter in 1932, or laid claim to Kuwait in its entirety in 1938, 1961 and 1990.

The problem with the 1932 correspondence is that its outline of the border is vague, an issue made worse by the lack of obvious geographical markers and the uniformity of the desert landscape. Although Kuwait and Iraq signed a document in 1963 effectively recognising Kuwait's independence and the boundaries as laid out in the 1932 correspondence (a document Saddam Hussein later declared to be invalid), it still does not clarify the precise location of the northern sector of the border, and instead ambiguously refers to the 'point just south of the latitude of Safwan'.

Less confusing but still unclear was the maritime border, which had the potential to limit Iraq's access to the Gulf considerably. A United Nations mission

finally demarcated the boundary in 1993, and although Iraq voiced its objections, it did legally accept the decision. Iraqi politicians have since repeatedly made incendiary remarks about the border, and in 2010, the Iraqi ambassador to the Arab League sparked an indecent when he cast serious doubts on Iraq's commitment to respecting the UN demarcation. In the light of such statements, Kuwait demanded an official and unequivocal acceptance of its borders by Iraq, which was finally issued in April 2013.

Another outstanding issue is the question of reparations. Based on UN Security Council Resolution 687, Iraq is liable not only for the damages incurred during its invasion of Kuwait, but also for the debt owed to the emirate before 1990. Compensation is required i.a. for the seizure of 10 aircraft belonging to Kuwait Airways, the theft of Kuwait's national archive, and environmental damage. A United Nations Compensation Commission determined that Baghdad must pay a total sum of 31.5 billion euros (of which it has so far settled 23). Most of the compensation goes to the Kuwaiti government and oil sector, and is paid out of a UN-managed fund into which Iraq pays 5 per cent of its oil revenue.

Over the last decade, some Iraqi policy-makers have exacerbated tensions with Kuwait by seeking to annul the debt on the grounds that the post-Saddam Hussein regime should not be liable for the actions of the late dictator. In an escalation of the dispute, Kuwait tasked a British law firm with seizing an Iraqi Airways aircraft upon the airline's first arrival in London in decades, provoking a public outcry in Iraq. However, last year, a deal was reached between the two national airlines, leading in March 2013 to the first flight by Iraqi Airways to Kuwait City.

Love thy neighbour

Not every matter between the two governments has been resolved. Remaining issues - such as the whereabouts of the Kuwaiti national archive, the fate of around 270 people who went missing during the 1990 war, and the return of stolen property (such as military equipment and artefacts) - will be addressed in the framework of UN Chapter VI. Other aspects, such as the sharing of the proceeds of the Rumaila oil field along the border, have been already settled, and even led to the first timid signs of normalisation. In 2011, the first Kuwaiti prime ministerial visit to Iraq since 1990 took place, and in 2012, the only high-ranking Gulf state representative to attend the Arab League summit held in Baghdad was the emir of Kuwait. Could this be a new chapter of a new story?

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