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The Persian Gulf War Cease-Fire Agreement Compared with the Japanese Peace Treaty in Terms of Reparations and Reconstruction

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The Persian Gulf War Cease-Fire Agreement Compared with the Japanese Peace Treaty in Terms of Reparations and Reconstruction[1]

I. Introduction

On September 3, 1939, President Franklin Roosevelt in his Neutrality Address said, "The influence of America should be consistent in seeking for humanity a final peace which will eliminate, as far as it is possible to do so, the continued use of force between nations."[2] Roosevelt's Secretary of State, John Foster Dulles, also emphasized the importance of "creating a stable and enduring order under law."[3] At the conclusion of World War II, Japan was completely defeated by the Allied Powers and was forced to surrender unconditionally.[4] The hope for lasting peace was incarnated in the Japanese Peace Treaty (Treaty). This document provided minor reparations for the victor[5] while rebuilding the vanquished.[6]

Approximately fifty years after the observations of President Roosevelt and Secretary of State Hull, President Bush, at the commencement of the Persian Gulf War, made the following statement:

> We have in this past year made great progress in ending the long era of conflict and Cold War. We have before us the opportunity to forge for ourselves and for future generations a new world order . . . an order in which a credible United Nations can use its peacekeeping role to fulfill the promise envisioned of the U.N.'s founders.[7]

At the conclusion of the Persian Gulf War in 1991, Iraq agreed to the terms for peace provided by the United Nations (UN) under the

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1. The author thanks Professor Joseph Kelly and Carl Schultz, J.D. Candidate 1993, both of the Dickinson School of Law, for their help in directing the research and organizing the structure of this Comment.

2. F. S. DUNN, PEACE-MAKING AND THE SETTLEMENT WITH JAPAN 3 (1963).

3. *Id.*

4. *Id.* at ix.

5. *See id.* at 152-153.

6. *Id.* at 144.

7. Grammas, *Multilateral Responses To The Iraqi Invasion of Kuwait: Economic Sanctions and Emerging Proliferation Controls*, 15 MD. J. INT'L L. & TRADE 1 (1991) (quoting *Address of President Bush to the Nation on Persian Gulf War*, Wash. Post, Jan. 17, 1991, at A29)).

Cease-Fire Agreement (Agreement).[8] The hope for a lasting peace was then placed into a document that made restoration of the defeated party contingent upon that party's capitulation to the victors' demands for substantial reparations.

This Comment analyzes the Japanese Peace Treaty and the Persian Gulf War Cease-Fire Agreement as to reparations to the victors and restoration to the defeated. Section II provides a brief background of the conflict between the Allied Powers and Japan during World War II, as well as a more lengthy recounting of the history of the Persian Gulf War. Section III discusses reparations provided by the Treaty and the Agreement by examining land and economic power, occupation, military power, and cash and non-cash repayments. Section IV compares restoration of the losing party under the Treaty with that of the Agreement by considering concerns for national sovereignty and reparations. Section V concludes that the Cease-Fire Agreement may be more desirable than the Japanese Peace Treaty for the victors; whereas the success of restorations under the Treaty had to precede reparations, under the Agreement reparations have to precede restoration.

II. Background

A. The Japanese Peace Treaty

Imperial Japan was an aggressive and formidible military power. In 1931 Imperial Japan seized Manchuria. During World War II, the Tokyo-Berlin Axis allied Nazi Germany with Imperial Japan. Japan bombed Pearl Harbor in 1941, bringing the United States into the war in the Pacific. Japan also seized many European colonies in Southeast Asia. Despite these gradual achievements for Japan, Allied troops were able to recover all these colonies; in 1945 the United States dropped atomic bombs which destroyed two Japanese cities, Hiroshima and Nagasaki. Subsequently, Japan was forced to surrender unconditionally to the Allied Powers.

The United States occupied Japan after World War II until 1952. During that time, the United States wrote a new democratic Constitution for Japan in 1947. In addition, the Japanese Peace Treaty was signed by forty-eight nations and Japan in 1951.[9] This Treaty's execution occurred six years after the Japanese surrender. The delay resulted from disagreements among the Allied Powers concerning the appropriate amount of reparations that Japan should

8. Starke, *Distinction between a Suspension of Hostilities and a Cease-Fire*, 65 AUSTRALIAN L.J. 293 (1991).

9. F.S. DUNN, *supra* note 1, at ix.

remit[10] and objections by Communist nations to attempts by the United States to establish a close alliance with Japan against Communism.[11]

B. The Persian Gulf War Cease-Fire Agreement

Iraq first claimed that Kuwait was a part of Iraq in 1961.[12] The claim was made immediately after Kuwait had declared herself to be independent and no longer a British protectorate.[13] Kuwait appealed to the United Nations, and received protection against Iraq from both Britain and Saudi Arabia.[14] The imminent Iraqi invasion thus was prevented.

The Iran-Iraq War lasted from 1980 to 1988. Kuwait aided Iraq during the conflict by giving oil and generous credit to Iraq.[15] Iraq emerged from the eight year war with a debt of $100 billion.[16] After the war, Iraq's President Saddam Hussein accused Kuwait of aggravating Iraq's financial liabilities.[17] First, he reasoned that Kuwait should cancel Iraq's $10 billion debt[18] because Iraq fought on behalf of the Islamic world during the Iran-Iraq War.[19] Second, President Hussein said that Kuwait and the United Arab Emirates (UAE) had exceeded oil production limits provided by the Organization of Petroleum Exporting Countries (OPEC).[20] President Hussein said that the OPEC violation increased the market supply of oil and lowered the value of oil at a loss to Iraq of $14 billion in profits.[21] Third, President Hussein accused Kuwait of robbing Iraq of $2.4 billion worth of oil by extracting oil from lands over which both Iraq and Kuwait claimed dominion.[22] Subsequently, both Iraq and Kuwait militarily fortified their adjacent borders.[23]

Efforts were instituted to resolve the brewing conflict. Kuwait notified the United Nations Secretary General of the problem on July 19, 1990. This action was criticized by Iraq as part of a Western 'imperialist' scheme.[24] That same day, Kuwait advised the Arab

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10. *See e.g. id.* at 146.
11. *See id.* at 172-173.
12. Green, *Iraq, The U.N. and The Law*, 29 ALBERTA L.R. 560, 563 (1991).
13. *Id.*
14. *Id.*
15. *Id.*
16. Askari, *The Next Persian Gulf Explosion*, N.Y. Times, Nov. 3, 1991, § 3, at 15, col. 2.
17. Nanda, *The Iraqi Invasion of Kuwait: The U.N. Response*, 15 So. ILL. UNIV. L. J. 431, 432 (1991).
18. Grammas, *supra* note 7, at 5.
19. Green, *supra* note 12, at 564.
20. Nanda, *supra* note 17, at 432.
21. *Id.*
22. *Id.*
23. Grammas, *supra* note 7, at 4.
24. *Id.*

League that Iraq had repeatedly failed to respond to Kuwait's overtures to settle the dispute.[25] On July 25, 1990, OPEC ordered Kuwait and the UAE to decrease their oil production by one quarter.[26] OPEC also increased the price per barrel of oil from approximately $15 to $20, but rejected Iraq's request to raise the price to $25.[27] On July 31, 1990, Saudi Arabia began mediating negotiations concerning boundary disputes between Iraq and Kuwait.[28] Although the meetings ended after two days without an agreement, the prospect of future mediation was discussed.[29]

However, on August 2, 1990, Iraq invaded Kuwait and occupied her within six hours.[30] At that time, Iraq announced that she had annexed Kuwait.[31] Iraq explained that the annexation was part of a process of reunifying the single Arab World that had been split into twenty-two Arab nations by European colonialism.[32]

This Iraqi action caused sanctions of condemnation to be levied from around the world against Iraq. The United States, Japan, France, and many European nations promptly froze Iraqi and Kuwaiti assets and placed economic sanctions on Iraq.[33] In addition, Iraq's use of force was condemned by the former Soviet Union, Israel, Japan, Iran, Western Europe, and several nations in Latin America, Africa, and Eastern Europe.[34] The UN Security Council Resolution No. 660 ordered broad economic sanctions against Iraq and her unconditional withdrawal from Kuwait.[35]

Meanwhile, Saudi Arabia was used as an assembly base for the twenty-six nation, anti-Iraq coalition [Coalition].[36] Pursuant to Resolution 678, on November 29, 1990, the UN Security Council authorized the use of "all necessary means" to evict Iraq from Kuwait if Iraq did not leave prior to January 15, 1991.[37]

The Kuwaiti Invasion saw President Hussein's strategy to appeal to Arab unity and to xenophobia[38], while promoting the success of the Kuwait invasion. President Hussein called for a *jihad*, a holy war, against the UN forces.[39] This invasion was denounced by some

25. *Id.*
26. Nanda, *supra* note 17, at 432.
27. Grammas, *supra* note 7, at 4.
28. *Id.* at 4-5.
29. *Id.* at 5.
30. *Id.*
31. Nanda, *supra* note 17, at 433.
32. *Id.* at 433, n.19.
33. *Id.*
34. Grammas, *supra* note 7, at 5.
35. Nanda, *supra* note 17, at 415, n.17 (citing 29 I.L.M. 1325 (1990)).
36. Nelan, *Call to Arms*, TIME, Sept. 24, 1990, at 32.
37. Starke, *supra* note 8, at 293.
38. Hatred or fear of foreigners. WEBSTER'S NEW WORLD DICTIONARY 1644 (2nd ed. 1984).
39. Nanda, *supra* note 17, at 35.

Arab nations, the majority of which shifted their focus to decrying the intrusion by the United States military into the conflict.[40] President Hussein indicated that he would consider the withdrawal from Kuwait only if Israel withdrew from lands claimed by Arabs.[41] Drawing Israel into the Kuwait invasion controversy was a rallying cry for Arabs to join together because Israel represents a foreign presence designed to weaken the Arabs.[42]

In the following conflict with UN forces, President Hussein also tried to draw Israel into the conflict again by bombing Israeli cities.[43] If Israel and the United States teamed against Iraq, other Arab nations would be obliged by their consciences to defend their fellow Arab nation against foreign attack.[44] President Hussein also hoped to sustain the presence of the UN coalition in Arab territory.[45] A prolonged stay by UN forces might decrease their commitment to go to war with Iraq, while increasing Arab fears and antagonism against the armed foreigners.[46]

On January 9, 1991, the United States met with Iraq at a Geneva conference and gave Iraq an ultimatum: leave Kuwait by January 15, 1991, or else the twenty-eight nation military coalition would begin a war to liberate Kuwait.[47] When Iraq remained in Kuwait after the deadline, Operation Dessert Storm began with an air-strike on Baghdad on January 16, 1991.[48] On February 24, 1991, the Coalition ground armies entered the war.[49] The Iraqi army fled Kuwait City on February 26, 1991.[50] On February 27, 1991, when the Coalition army entered Kuwait City, civilian crowds rejoiced by chanting "U.S.A."[51] The Coalition forces had destroyed Iraqi defenses to the extent that allied infantry could have easily entered Baghdad uncontested.[52]

Then, on February 27, 1991, President Bush announced that the coalition forces would suspend combat, but that the permanancy of the suspension was contingent upon Iraq's compliance with the rele-

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40. Talhami, *The Ideology of Arab Nationalism and the Persian Gulf Crisis*, 15 S. ILL. U.L.J. 511 (1991).

41. Nanda, *supra* note 17, at 433.

42. Weinbaum, *Arab Opinion, U.S. Foreign Policy, And The Persian Gulf*, 15 S. ILL. U.L.J. 501, 502 (1991).

43. Lacayo, *Five Decisive Moments*, TIME, Mar. 11, 1991, at 33.

44. Weinbaum, *supra* note 42, at 508.

45. *Id.* at 507.

46. *Id.*

47. Lacayo, *supra* note 43, at 32.

48. Nelan, *Could Saddam Have Done Better*, TIME, Mar. 11, 1991, at .

49. Nelan, *Free at Last! Free at Last!*, TIME, Mar. 11, 1991, at 38 [hereinafter *Free at Last*].

50. *Id.* at 40.

51. *Id.*

52. Lacayo, *supra* note 43, at 33.

vant UN resolutions.[53] President Bush indicated that the relevant resolutions included relinquishing Kuwait and paying reparations for Iraq's occupation of Kuwait.[54] Subsequently, the Iraqi foreign minister delivered the following message: "I would like to inform you that the Iraqi Government agrees to adhere to Resolutions 662 and 674 if the Security Council orders an immediate cease-fire and an end to all land, sea and air military operations."[55] Finally, on April 3, 1991, the terms of the Persian Gulf War Cease-Fire Agreement were set forth by the UN Security Council in Resolution 687.[56]

III. Reparations

A. Introduction

Both the Japanese Peace Treaty and the Persian Gulf Cease-Fire Agreement attempted to provide feasible means for the losing party in each underlying conflict to make amends for war damages. For example, both the Treaty and the Agreement forced the losing parties to do the following: 1) relinquish territory and economic power; 2) be subjected to occupation at the expense of the victorious party; and 3) limit their military power.

However, the Treaty and the Agreement differed in cash and non-cash reparations. The Treaty tried to achieve its goals by encouraging Japanese growth and fostering good relations with the parties in order to facilitate the reparation process.[57] In contrast, the Agreement fails to foster amicable relations between the parties. The Agreement maintains an effective embargo until, and as long as, the reparations are made.[58]

The Treaty recognized that Japan could not make complete war reparations and "maintain a viable economy."[59] Consequently, cash reparations were limited. In contrast with the Treaty, the Agreement seeks to retrieve substantial cash reparations from Iraq's existing resources.[60] The Treaty also sought non-cash reparations, including the following: services,[61] products,[62] political alliance,[63] favored trade

53. *See* Gerstenzang & Williams, *Bush Halts Combat*, L.A. Times, Feb. 28, 1991, at A1, col. 5.

54. *Id.*

55. Starke, *supra* note 8, at 293.

56. U.N. Sec. Council Res. 687, U.N. Doc. S/Res/687 (1991), *reprinted in* 30 I.L.M. 846 (1991)[hereinafter Resolution 687].

57. F.S. DUNN, *supra* note 2, at 144 *passim.*

58. *E.g.*, *see* Tyler, *Iraq Is Blocking Aid Distribution*, N.Y. Times, Nov. 3, 1991, §1, at 4, col. 1 [hereinafter *Blocking Aid*].

59. Japanese Peace Treaty, Sept. 8, 1951, art. 14, 3 U.S.T. 3169, 3180, T.I.A.S. No. 2490, 136 U.N.T.S. 45, 60-62 [hereinafter Japanese Peace Treaty].

60. *See infra* text accompanying notes 109-117.

61. Japanese Peace Treaty, *supra* note 59, art. 14(a)(1).

62. *See id.*

63. F.S DUNN, *supra* note 2, at 144.

status,[64] and trial for war crimes.[65] Meanwhile, the Agreement seeks non-cash reparations such as oil,[66] strategic information,[67] and the establishment of the United Nations as a police power to enforce a new world order.[68]

B. Relinquishing Territory and Economic Power

Both the Japanese Peace Treaty and the Persian Gulf War Cease-Fire Agreement attempted to have the losing parties in the underlying conflicts relinquish certain territorial claims. The Treaty provided that Japan would renounce claims to the following lands: Korea, Formosa, the Pescadores, the Kurile Islands, a portion of Sakhalin and adjacent islands, the Antarctic area, the Spratly Islands, and the Paracel Islands.[69] These territories were important to Japan's colonial economy.[70]

Similarly under the Agreement, Iraq was to renounce her claims to Kuwait. The Agreement required Iraq to recognize the boundaries between Kuwait and Iraq as set out in a treaty between them in 1964.[71] Iraq would have produced 20% of the world's oil had she been able to retain Kuwait.[72] Prior to the Kuwait invasion, Iraq already controlled half of the Gulf's oil-exporting nations though her intimidation techniques.[73] Thus, the victorious parties under both the Agreement and the Japanese Peace Treaty accomplished the important goals of thwarting the expansion of the losing parties.

C. Costly Occupation by Victors

The conclusion of both wars terminated with the expensive maintenance of the victors' military presence in the regions. The purposes of both occupations were ostensibly to maintain the peace that the victors had achieved.

Peace keeping methods are expensive. For example, during her six-year occupation of Japan, the United States spent $2 billion.[74] Similar to the United States occupation of Japan, the UN will accrue significant costs in maintaining order at the conclusion of the Persian Gulf War.

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64. Japanese Peace Treaty, *supra* note 59, art. 12-13.
65. *Id.*, art. 11.
66. *See infra* text accompanying notes 149-170.
67. *See infra* text accompanying notes 171-173.
68. *See infra* text accompanying notes 174-80.
69. Japanese Peace Treaty, *supra* note 59, art. 2.
70. F.S DUNN, *supra* note 2, at 171.
71. Resolution 687, *supra* note 56, ¶2.
72. Weinbaum, *supra* note 44, at 505.
73. *Id.* at 505.
74. F.S DUNN, *supra* note 2, at 148.

An example of the cost of maintaining order is the UN observer unit's overseeing of a demilitarized zone extending ten miles into Iraq and five miles into Kuwait, in an effort to prevent boundary aggressions.[75] The UN has already appropriated $60,977,000 for this UN Iraq-Kuwait Observation Mission.[76] Thus, the Coalition is at risk of investing substantial amounts of money to keep the peace through occupation, like the United States was forced to do in Japan at the conclusion of World War II.

D. Limiting Military Power

Both the Japanese Peace Treaty and the Persian Gulf War Cease-Fire Agreement placed substantial limits on the military powers of losing parties to limit their ability to initiate a future conflict. The need for the Japanese Peace Treaty of 1951 to place limits on Japan's arms was obviated by Article 9 of the Japanese Constitution of 1947, in which Japan had already renounced war.[77] General MacArthur believed, moreover, that the renunciation of the war clause reflected the sentiment of the Japanese, who had lost two cities as the result of the atomic bomb.[78] Yet the treaty also recognized that Japan had "the inherent right of individual or collective self-defense" pursuant to Article 51 of the Charter of the United Nations.[79] The United States armed forces, furthermore, would retain Japanese bases at a great expense to limit future aggression by either Japan or the Soviet Union.[80]

Similarly, the Agreement also tries to limit the threat of future Iraqi aggression. The Agreement provides that Iraq shall unconditionally accept the destruction of the following: all chemical and biological weapons, as well as all research, development, support, and manufacturing facilities;[81] "all ballistic missiles with a range greater than 150 kilometres and related major parts, and repair and production facilities;"[82] and all "nuclear weapons or nuclear-weapons-usable material or any subsystems or components or any research, development, support or manufacturing facilities related to the above."[83] In addition, Iraq was to submit the location of these chemical, biological, and ballistic weapons to the UN within fifteen days

75. Resolution 687, *supra* note 56, ¶5.
76. G.A. Res. 260, U.N. Doc. A/Res/45/260 (1991), *reprinted in* 30 I.L.M. 843 (1991).
77. *See* F.S DUNN, *supra* note 2, at 54.
78. *See id.*
79. Japanese Peace Treaty, *supra* note 59, art. 5.
80. F.S DUNN, *supra* note 2, at 191.
81. Resolution 687, *supra* note 56, ¶8.
82. *Id.*
83. *Id.*, ¶12.

of the adoption of the resolution.[84]

The Agreement provides that the UN will monitor Iraq's future compliance with the resolution pursuant to a plan developed by the UN within 120 days of the passage of the resolution.[85] The Agreement also provides that the Director-General of the International Atomic Energy Agency and a UN Special Commission will carry out immediate on-site inspection of Iraq's nuclear capabilities based on designations of the commission and on Iraq's own declarations.[86] Pursuant to the agreement and within fifteen days of its passage, Iraq was to give the location, quantity, and description of nuclear materials to the UN Secretary General.[87] In addition, Iraq shall not develop or acquire nuclear weapons or materials in the future.[88] Compliance of these items will be monitored and verified by the UN Special Commission.[89]

The Agreement utilizes, moreover, positive reinforcement to encourage Iraq to comply with the military restrictions. Specifically, the Agreement provides that the UN may lift the prohibition against "import of products and commodities originating in Iraq" and related financial transactions,[90] if Iraq complies with the relevant portion of the Agreement[91] relating to the destruction of prohibited chemical and nuclear weapons and ballistic missiles.[92] The UN will review prohibitions on Iraqi commodities 120 days following the resolution's passage and on a regular basis.[93] Also, the UN will consider arms control in the region, as well as Iraq's compliance with the resolution.[94]

For several reasons, reparations in the form of limiting Iraqi arms is particularly valuable to the Coalition in the Persian Gulf War. First, the UN appears, under the Cease-Fire Agreement, to be neutralizing the dangerous nuclear capabilities of Iraq. For example, blue prints of an atomic bomb that Iraq planned to build were discovered by the UN.[95] These points indicated that Iraq could have produced an atomic bomb capable of being carried by a missile within a year.[96] Iraq only needed greater supplies of fissionable ura-

84. *Id.*, ¶9.
85. *Id.*, ¶10.
86. *Id.*, ¶13.
87. *Id.*, ¶12.
88. *Id.*
89. *Id.*, ¶13.
90. U.N. Sec. Council Res. 661, U.N. Doc. S/Res/661 (1990).
91. *Id.*, ¶¶8-13, 19
92. *Id.*, ¶22.
93. *Id.*
94. *Id.*, ¶22.
95. *UN Team Finds Iraq Atom Bomb Plans*, Chic. Trib., Oct. 26, 1991, at 3, col. C. [hereinafter *U.S. Team*].
96. *Id.*

nium and plutonium to complete construction of her atom bomb.[97] In addition, Iraq was working towards building a bomb of even greater destructive power than the atomic bomb, namely the Hydrogen bomb.[98] Interestingly, the nerve-center of Iraq's nuclear program was not destroyed by the thorough allied bombings in 1991.[99] Arguably, Iraq would have been able to construct the bomb after the Persian Gulf War if the Agreement had failed to create United Nations inspection teams to extinguish the Iraqi nuclear program.

Second, the Allied Nations uncovered an enormous Iraqi arsenal of chemical weapons to destroy. The UN will need to work until at least 1993 to completely eliminate Iraq's large quantity of chemical weapons.[100] Third, the UN has been successful in destroying certain important Iraqi weapons. For instance, UN weapon inspectors have searched by helicopter for Iraqi missiles and launchers to destroy.[101] The weapon inspectors also have destroyed substantial numbers of Iraqi Scud launchers and Scud missiles.[102] Some UN Inspectors must continue to search for more weapons because Iraq has failed to identify the locations of approximately 300 Scud missiles.[103] However, some UN Inspectors believe that the supposedly missing missiles may actually have been destroyed during the Persian Gulf War.[104]

The Agreement of necessity also limits future Iraqi aggression by maintaining an expensive UN Iraq-Kuwait Observation Mission.[105] In contrast with Japan at the conclusion of World War II,[106] Iraq has not indicated in form or spirit a renunciation of war.[107] The Agreement eliminated Iraq's most dangerous weapons, but allowed her to keep sizeable armed forces.[108] Thus, not unlike the United States Armed Forces based in Japan, a coalition force is maintained under the Agreement to deter future aggressions between Iraq and Kuwait.

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97. *UN: Iraqi Bomb Tests*, Newsday, Oct. 25, 1991, at 14.

98. Lewis, *U.N. to Impose New Arms Curbs on Iraq*, N.Y. Times, Oct. 9, 1991, at A6, col. 1.

99. *Allies Failed To Destroy Iraq Nuclear 'Nerve Center,' UN says*, N.Y. Times, Oct. 8, 1991, at 5.

100. *U.S. Team*, *supra* note 95, at 3.

101. *See* Rowe, *U.N. to Urge Iraq to 'Come Clean" on Nuclear Plans*, The Wash. Post, Oct. 4, 1991, at A20 [hereinafter *Come Clean on Nuclear Plans*].

102. *UN Copter Team Begins Iraq Search*, Chic. Trib., Oct. 4, 1991, ¶ News, at 5.

103. Meisler, *300 Iraq Scuds Missing, U.N. Team Reports*, L.A. Times, Nov. 2, 1991, at A10, col. 1.

104. *Id.*

105. *See supra* text accompanying notes 75-76.

106. *See supra* text accompanying note 77.

107. *See, e.g.*, Tyler, *Baghdad Now Seen Exerting Economic Pressure on Kurds*, N.Y. Times, Nov. 6, 1991, at A16, col. 1. The Hussein Government is engaged in a bloody war with Kurdish rebels, as of November 6, 1991. *Id.*

108. Hart, *What's Left of Iraq's Army*, TIME, Mar. 11, 1991, at 36.

E. Cash Payments

In contrast to the Japanese Peace Treaty, the Agreement will attempt to recover large reparations from the defeated party. The Allies did not receive substantial cash reparations under the Japanese Peace Treaty.[109] In fact, the Allied Powers received their greatest financial reparations from Japan from the Japanese assets seized during the war.[110] However, the Treaty forced Japan, using assets she had held in neutral countries, to compensate those Allied soldiers who had suffered "undue hardships" when they were held as Japanese prisoners of war.[111] The United States did not seek greater reparations because she did not want to strip Japan of her resources. The United States intended to create an ally out of Japan against Communist nations.[112] The United States Foreign Minister Dulles, who was assigned to handle the Treaty,[113] also reasoned that the burden of bargaining for reparations outweighed the benefit of what could be collected.[114] He based his opinion on the failure of the Allies to collect reparations from Germany after World War I.[115]

In contrast to the Treaty, the Persian Gulf War Cease-Fire Agreement is designed to extract substantial funds from the defeated party, oil-rich[116] Iraq. Although Dulles was pessimistic about the prospect of recovering significant war reparations, the Coalition did not completely devastate Iraq during the brief Gulf War and now seeks to cash in on the spared Iraqi assets. Article 16 of the Agreement provides the following:

> Iraq, without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through the normal mechanisms, is liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait.[117]

Article 16 of the Agreement may even enable mistreated prisoners of war[118] to receive reparations. In addition, Iraq will pay its

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109. *See* F.S DUNN, *supra* note 2, at 152-153.
110. *Id.* at 153.
111. Japanese Peace Treaty, *supra* note 58, art. 16.
112. *See infra* text accompanying notes 136-140.
113. F.S DUNN, *supra* note 2, at 97.
114. *Id.* at 151-152.
115. *Id.*
116. *Out of Joint; A New Arab Order*, THE ECONOMIST, Sept. 28, 1991, at 4. The second largest number of oil reserves are in Iraq. *Id.*
117. Resolution 687, *supra* note 56, ¶16.
118. *See* Meron, *Prisoners of War, Civilians and Diplomats in The Gulf Crisis*, 85 AM. J. INT'L. L. 104 (1991). Iraq violated the rights under the fourth Geneva Convention of U.S. citizens who were captured in Kuwait. *Id.* at 106.

debts to a United Nations Commission, who will appropriately administer funds to the claimants.[119] Moreover, Iraq's contribution to the fund will be "based on a percentage of the value of the exports of petroleum and petroleum products from Iraq not to exceed a figure to be suggested" by the UN, "taking into account the requirements of the people of Iraq, Iraq's payment capacity as assessed in conjunction with the international financial institutions taking into consideration external debt service, and the needs of the Iraqi economy."[120] The UN Security Council has placed a limit on annual reparations by Iraq.[121] The payments must never exceed her expenditures on arms before the Persian Gulf War.[122] Before the war, Iraq spent approximately $5 billion annually on arms.[123]

The UN will try to effectuate Iraqi repayments by positive-reinforcement methods built into the Agreement. For example, the UN may lift the prohibition on sale of foodstuffs that are essential to civilian needs,[124] subject to review every sixty days "in light of the policies and practices" of Iraq.[125] In addition, the UN can make exceptions to the prohibitions against the "import of products and commodities originating in Iraq" so that Iraq may have proper funds to pay for foodstuffs essential to civilian needs.[126]

Moreover, the UN will review prohibitions on Iraqi commodities 120 days following the resolution's passage and on a regular basis.[127] Also, the UN will consider arms control in the region as well as Iraq's compliance with the resolution.[128] Thus, the UN has attempted to give the appearance through the Agreement that it is in Iraq's best interest to make war monetary reparations. In contrast with the Japanese Peace Treaty, Iraq's wealth and the UN embargo enable the Agreement to be more optimistic in extracting cash reparations from the losing party.

F. Non-Cash Payments

The Japanese Peace Treaty and the Persian Gulf War Cease-Fire Agreement both try to procure non-cash reparations from the losing party. The Japanese Peace Treaty attempted to maximize Japan's reparation contributions by having her repay in ways other

119. Resolution 687, *supra* at note 56, ¶18.
120. *Id.*, ¶19.
121. Lewis, *supra* note 98, at A6.
122. *Id.*
123. *Id.*
124. U.N. Security Council Resolution No. 661 (1990).
125. Resolution 687, *supra* note 56, ¶¶ 20,21.
126. *Id.*, ¶¶20, 23.
127. *Id.*, ¶28.
128. *Id.*

than cash, to avoid "any foreign exchange burden upon Japan."[129] For example, Japan would make her people available to the Allied Powers for repairing war damage,[130] including in the form of technical support.[131] Japan would also supply Allied Powers with manufactured raw materials.[132] Allied Powers, moreover, could seize certain non-exempted Japanese assets.[133] For example, Allied Powers could take advantage of new markets that would result as the consequence of Japan being stripped of her colonial and quasi-colonial territories.[134] Furthermore, Japanese assets located overseas could be seized.[135]

As a form of non-monetary payment, the Japanese Peace Treaty also attempted to have Japan repay the victorious Allied Powers by becoming a loyal and powerful ally against the former Soviet Union.[136] Secretary of State Dulles emphasized that Japan should be treated as an equal and sovereign nation and allowed to establish an upwardly mobile economy.[137] The effect of this treatment was designed to encourage Japan to chose Democracy over Communism.[138] Dulles feared that Japan's proximity to the Soviet Union and China would lead Japan to rely economically on Communist nations, and thus, be sucked into the Communist world.[139] Consequently, the United States sought and received assurances from Japan that she would not establish relations with Communist China, although the Japanese Peace Treaty itself had no provision to that effect.[140]

Another non-monetary payment made by Japan pursuant to the Japanese Peace Treaty was to allow Allied Nations to enjoy a favored status in Japan concerning commerce and law to the extent that the Allied Nation afforded such a preference to Japan. Japan accorded to each Allied Nation the status of most-favored nation with respect to the taxation of internationally traded goods.[141] The Allied Nations received national treatment in "shipping, navigation and imported goods, and with respect to natural and juridical persons and their interests" from Japan.[142] However, Japan did not

129. Japanese Peace Treaty, *supra* note 59, art. 14.
130. *Id.*
131. F.S. DUNN, *supra* note 2, at 171.
132. Japanese Peace Treaty, *supra* note 59, art. 14.
133. *Id.*
134. *See* F.S. DUNN, *supra* note 2, at 171.
135. *Id.*
136. *Id.* at 144 *passim.*
137. *Id.*
138. *Id.*
139. *See id.* at 145.
140. *Id.*
141. Japanese Peace Treaty, *supra* note 59, art. 12(b)(I)(i).
142. *Id.*, art. 12(b)(I)(ii).

have to provide such status to an Allied Nation in an area where the Allied Nation did not provide similar status to Japan.[143] If an Allied nation extended favored status to Japan, then she would reciprocate with the same treatment.[144]

In the area of criminal prosecution, the Japanese Peace Treaty brought war criminals to justice by trial.[145] This allowed reparations in the form of retribution and deterrence. The Japanese Peace Treaty provided that Japan would accept and enforce the sentences of war criminals.[146] Japan could recommend clemency, (*i.e.* reduced sentences or parole for certain prisoners,) which the governments imposing the sentences might accept.[147] It is not clear whether trying war criminals prevents future international atrocities.[148]

In comparison, the Agreement has experienced mixed success in achieving non-cash reparations for the Coalition. On one hand, the major oil-importing members of the Coalition have missed an opportunity to establish oil as a source for Iraqi reparation payments. The UN Security Council allowed Iraq to sell $1.6 billion worth of crude oil so that Iraq would have proper funds to pay for foodstuffs and medicine essential to civilian needs.[149] At this time, oil prices were at a level higher than it had been in eight months, and the prices were on a continual rise.[150] The time was right for the UN to consumate the deal. The sale would increase the supply of oil on the market and encourage a reduction in oil prices. In addition, the deal would simultaneously extract reparations from Iraq and help reconstruct the Iraqi economy. However, Iraq's Oil Minister Osama A.R. al-Hiti refused to approve such a bargain because he believed that such plan was part of a UN political agenda to destroy President Saddam Hussein's power by seizing economic control over Iraq's primary resource, oil.[151] Iraq views the reparation process as a post-war assault against President Hussein. The United States has said that she wants all sanctions against Iraq maintained as long as President Hussein stays in control of Iraq.[152] President Bush has antagonized the Hussein administration by stating, among other things, "Let me

143. *Id.*, art. 12(c).
144. *Id.*, art. 13.
145. *Id.*, art. 11.
146. *Id.*
147. *Id.*
148. *See* Anderson, *The Utility of the Proposed Trial and Punishment of Enemy Leaders*, 37 AM. POL. SCI. REV. 1081 (1943).
149. Tyler, *Iraq Oil Minister Rejects U.N. Plan*, N.Y. Times, Oct. 25, 1991, at A9, col. 1 [hereinafter *Oil Minister*].
150. *Oil Prices Jump on Fears of Weak Supplies*, Chic. Trib., Oct. 15, 1991, § Business, at 6 [hereinafter *Oil Prices Jump*].
151. *Oil Minister*, *supra* note 149, at 6.
152. Kerr, *Iraq Short of Key Commodities — Especially Money*, The Reuters Library Report (May 10, 1991)(LEXIS, Nexis Library, LBYRPT file).

reiterate, we want him (Hussein) out."[153] Thus, politics was a form of reparations under the Japanese Peace Treaty,[154] but politics caused difficulty in collecting reparations under the Cease-Fire Agreement.

Moreover, the Agreement's demands for Iraq to pay large reparations may discourage Iraq from rebuilding her economy so that she can make the reparations. Certainly, the UN has reason to believe that Iraq has substantial currency assets because she has bought food and medicine without selling oil.[155] However, trade analysts have said that Iraq is deficient in cash assets.[156] In addition, the size of Iraq's debt is so immense that resumption of exporting oil to the world may be necessary for Iraq to pay off her debts.

Furthermore, Iraq has incurred substantial liabilities during the past war with Kuwait in 1991. Iraq caused at least $22 billion worth of damage to Kuwait during Iraq's seven month occupation of Kuwait.[157] Although the Agreement now provides that Iraq shall pay reparations to Kuwait, Iraq has yet to consent.[158] The Persian Gulf War, moreover, forced Turkey to shut down a pipeline running from Iraq through Turkey and to the Mediterranean Sea, resulting in lost proceeds of $380 million for Turkey.[159] Iraq and Turkey are negotiating as to whether Turkey's damages should be assessed using full capacity or actual oil flow as a basis for calculating the damages.[160]

In additon, Iraq also had accumulated many liabilities prior to invading Kuwait. For example, Iraq has a $100 billion debt from the war with Iran that ended in 1988.[161] Bulgaria is eager to collect the $1.12 billion in oil owed to her by Iraq.[162] Iraq also owes $2 billion in commercial loans guaranteed by the United States.[163]

Despite Iraq's large debt, she has not fully exploited her primary resource, oil, to help satisfy her obligations. Iraq has expressed a reluctance to resume exporting oil to Europe because all proceeds will be paid to the United Nations. Iraq's Oil Minister Hiti has re-

153. *World In Brief; Iraq; U.N. Official Seeks Better Cooperation*, L.A Times, Oct. 6, 1991, at A14, col. 2 [hereinafter *Better Cooperation*].

154. *See supra* text accompanying notes 136-40.

155. Rowe, *U.N. Wonders How Iraq Imports Food, Keeps Oil; Conjecture Includes Sale of Gold Reserves*, The Wash. Post, Oct. 22, 1991, at A17 [hereinafter *UN Wonders*].

156. Kerr, *supra* note 152.

157. Ibrahim, *Most Oil Fires Are Out in Kuwait, But Its Environment is Devastated*, N.Y. Times, Oct. 19, 1991, § 1, at 1, col. 4.

158. Prokesch, *Kuwait Seeks $5 Billion To Repair War Damage*, N.Y. Times, Oct. 11, 1991, at 1, col. 4.

159. *Turkey To Let Iraq Oil Flow Once Fees Resolved*, The Reuters Library Report (Sept. 21, 1991)(LEXIS, Nexis library, LBYRPT file).

160. *Id.*

161. Askari, *supra* note 16, at 15.

162. *Bulgaria Still Hopes Iraq Will Repay Debts in Oil*, The Reuters Library Report (Apr. 25, 1991)(LEXIS, Nexis library, LBYRPT file).

163. Kerr, *supra* note 152.

fused to export oil, by the pipeline through Turkey, to be shipped to Europe.[164] Mr. Hiti complained that the Agreement prevents Iraq from selling to non-European nations.[165] Iraq would be forced, moreover, to lower the sale price to Asian consumers because of transport differentials.[166] The Agreement, furthermore, stops Iraq from transacting barter and pre-financing contracts, according to the Oil Minister.[167] Mr. Hiti, consequently, has made no effort to open the pipeline because the UN reparation demands are "like a spider web. Once you get into it, there is no end, and you will never be free."[168]

Iraq's refusal to sell oil for necessaries may indicate an Iraqi political strategy and not an Iraqi surplusage of assets.[169] Thus, while the Allied were able to receive reparations from Japan in the 1940s under Dulles' philosophy of allowing Japan's economy to develop freely,[170] the chances of the UN now receiving reparations from Iraq in the 1990s is threatened because the implementation of the Persian Gulf Cease-Fire Agreement has heavily burdened Iraq's economy.

On the other hand, the Agreement has acheived some non-monetary reparations for the Coalition. First, the Coalition has gained valuable access to information concerning which foreign countries and organizations helped develop Iraq's nuclear capabilities. For example, the UN discovered which companies gave aid to Iraq in developing a nuclear arsenal.[171] United States intelligence agencies learned that China had, contrary to her promises, supplied information to Iraq on how to construct nuclear weapons.[172] France supplied Iraq with at least three tons of heavy water, a compound used for running a nuclear reactor which can produce plutonium, a necessary component for an atomic bomb.[173] Thus, the victors in the Persian Gulf War learned valuable information as a result of the agreement about the trustworthiness of both certian corporations and other nations.

The Agreement can also accomplish the non-financial goal of promoting a new world order. The UN has police powers that "may include demonstrations, blockade, and other operations by air, sea, or land forces of members of the United Nations."[174] To be sure, the

164. *Oil Minister*, *supra* note 149, at 9.
165. *Id.*
166. *Id.*
167. *Id.*
168. *Id.*
169. *U.N. Wonders*, *supra* note 155, at A17.
170. *See supra* text accompanying notes 136-40.
171. Newsday, Oct. 3, 1991, at 14.
172. Chic. Trib., Oct. 31, 1991, at 3.
173. *U.N. Wonders*, *supra* note 155, at A17.
174. Frank & Patel, *UN Police Action in Lieu of War: "The Old Order Changeth"*, 85 AM. J. INT'L. L. 63 (1991)(citing art. 42 of the UN Charter).

UN had used her police powers before the Persian Gulf Crisis.[175] The Korean War is an example of a prior exercise of the police powers.[176] However, the UN response in the Gulf Crisis is particularly noteworthy. Iraq was a country whose armed forces were experienced and massive,[177] but a twenty-six nation coalition[178] swiftly subdued Hussein's war machine and restored Kuwait's sovereignty.[179] The old rivals of the United States and the former Soviet Union were now united superpowers in their support of the police action.[180] The exercise of UN police powers sent a message of deterrence to other powerful nations who may violate international law by the use of force in the future.

IV. Winners' Reconstruction of Loser

A. Introduction

Both the Japanese Peace Treaty and the Persian Gulf Cease-Fire Agreement attempted to provide a way for the winning parties in those underlying conflicts to aid the economies of the losing parties. First, the Japanese Peace Treaty and the Cease-Fire Agreement each have shown respect for the sovereignty of the losing party. Second, the Treaty and the Agreement allowed the defeated nations to restore themselves, but made the process, in effect, contingent upon benefiting the victorious parties. The United States aided the restoration of Japan after World War II by strengthening her ties with other nations[181] and allowing her to freely develop her industries, including the military.[182]

The U.S. encouraged Japanese growth for a couple of reasons. First, the United States did not want the continued and expensive responsibility of supporting Japan.[183] Second, the U.S. wanted to build a strong ally in Japan against the threats of Communist nations, such as the then Soviet Union and China.[184] The Allies achieved an alliance with defeated Japan by providing economic opportunities under the Treaty. These opportunities made it in Japan's best interest to choose a free enterprise system over Communism.

Similarly, in 1991-92, the Coalition forces want to aid in the reconstruction of Iraq to promote a new world order, a lasting peace,

175. *See id.* at 70.
176. *Id.*
177. Hart, *supra* note 108, at 36.
178. Nelan, *supra* note 36, at 33.
179. *See supra* text accompanying notes 46-50.
180. Grammas, *supra* note 7, at 5.
181. *See infra* text accompanying notes 204-12.
182. *See infra* text accompanying notes 212-15.
183. *See* F.S. DUNN, *supra* note 2, at 191-192.
184. *Id.*

available oil supplies, and reparations. The Coalition forces' hope to encourage compliance by an embargo and by promotion and exploitation of conditions that increase Iraq's need to comply with the Agreement. Therefore, the Coalition has tried to strengthen ties among Iraq and Coalition members,[185] while prompting the ouster of the belligerent and volatile Iraqi leader, President Hussein.[186] The Coalition has also benefitted from conditions that tend to promote Iraq's early compliance, such as a possible inability to find oil buyers and an enormous national debt.[187] The Coalition has fortified its own bargaining position by aiding Iraqi rebellions[188] and avoiding blame for the poor health and nutrition conditions among Iraqi civilians.[189]

B. Respect for Sovereignty of Losing Nation

The Japanese Peace Treaty of 1951 and the Cease-Fire Agreement of 1991 both tried to recognize the national sovereignty of the losing nations. The Japanese Peace Treaty stated that "the Allied Powers recognize the full sovereignty of the Japanese people over Japan and its territorial waters."[190] However, the Treaty provided that the United States would "have the right to exercise all and any powers of administration, legislation and jurisdiction" over Japan.[191] The Treaty further stated that the Allied Powers would cease to occupy Japan as soon as possible and no later than ninety days after the Treaty came into force.[192] Finally, the Treaty also recognized that Japan had "the inherent right of individual or collective self-defense" pursuant to Article 51 of the Charter of the United Nations.[193] The Treaty noted that: "Japan may voluntarily enter into collective security arrangements."[194]

The Cease-Fire Agreement also recognizes the sovereignty of Iraq despite Iraq's claims that here sovereignty has been violated by United Nations weapons controls.[195] These controls provide that the United Nations will monitor Iraqi armed forces as long as President Hussein is in power.[196] Iraq will have to submit reports twice per year concerning any work that might have a military application.[197]

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185. *See infra* text accompanying notes 235-37.
186. *See infra* text accompanying notes 238-39.
187. *See infra* text accompanying notes 240-50.
188. *See infra* text accompanying notes 241-43.
189. *See infra* text accompanying notes 244-49.
190. Japanese Peace Treaty, *supra* note 59, art. 1(b).
191. *Id.*, art. 3.
192. *Id.*, art. 6.
193. *Id.*, art. 5.
194. *Id.*
195. *Baghdad Complains To U.N. Over Tougher Restrictions On Weapons*, L.A. Times, Oct. 13, 1991, at A6, col. 2 [hereinafter *Babhdad Complains*].
196. *Id.*
197. *Id.*

However, the Hussein Government has been allowed to continue to rule Iraq. In addition, Iraq been not been denied the right to protect herself or maintain her strong armed forces. Thus, the Japanese Peace Treaty and the Cease-Fire Agreement were generous to the losing parties by permitting them to maintain basic sovereignty.

C. Positive Reinforcement: Building a Strong Ally or Weak Enemy

The Japanese Peace Treaty and the Persian Gulf War Cease-Fire Agreement both related the reconstruction of the losing party with the victorious parties's desire to receive reparations. The United States, in particular, wanted to create a strong ally in Japan.[198] Secretary of State Dulles wanted Japan's post-war economic revival under Democracy to stand as a beacon throughout Asia to discourage the expansion of Communism.[199]

Thus, the Treaty provides that the Allied Powers could not seize many types of Japanese assets.[200] Among these properties were included the following: "real property, furniture and fixtures" owned by the Japanese government and used for diplomatic or consular purposes; private property not of an investment nature owned by Japanese officials and normally necessary for carrying out diplomatic and consular functions; properties of religious and charitable groups; assets which have been acquired after Japan surrendered and not in violation of the laws of the Allied Powers; "obligations of Japan or Japanese nationals"; tangible property in Japan; and enterprises organized under Japanese law and expressed in Japanese currency.[201] In addition, Japanese trademarks, which involved both literary and artistic property, would be afforded favorable treatment by each Allied nation as permitted by their own laws.[202] Meanwhile, all other Allied claims for war reparations and the cost of occupation were waived.[203]

The Japanese Peace Treaty also tried to strengthen Japan's ties with other nations to encourage relations that would benefit the Allied Powers. For example, Japan — pursuant to the Treaty — declared her intention to join the United Nations, in order to operate in accordance with the Universal Declaration of Human Rights, and to conform to internationally accepted fair practices in public and private commerce.[204] Allied nations could renew their pre-war treaties

198. *See* F.S. DUNN, *supra* note 2, at 191-192 *passim.*
199. *Id.* at 99.
200. *See* Japanese Peace Treaty, *supra* note 59, art. 14.
201. *Id.*, art. 14(a).
202. *Id.*, art. 14(a)(V).
203. *Id.*, art. 14(b).
204. *Id.*, preamble.

with Japan within one year after the Treaty became effective.[205]

Japan and the Allied Powers would also negotiate to create an agreement regarding regulation of fishing on the high seas[206] (an important concern of the Allied Powers) and other commercial relations.[207] Japan would negotiate agreements with Allied Powers concerning civil air transport.[208] She would also become a party to the Convention on International Civil Aviation.[209]

Moreover, the Treaty provided that Japan would affirm her liability for debts incurred prior to the war and would enter negotiations for the purpose of repaying her creditors.[210] The Treaty also allowed the Japanese industries to develop new markets in non-Communist nations of the South and Southeast Asia[211] to avoid Japanese dependence on Communist nations and thus to discourage possible Communist sympathies.[212]

The Treaty, in an attempt to create a strong Japanese ally against Communism, was not afraid to aid in rebuilding Japanese industries that might be used to recreate a war machine.[213] Notably, the Japanese economy was given its greatest boost from the fact that the Allied Powers placed no restrictions on the Japanese shipbuilding.[214] Furthermore, the Treaty itself did not strip Japan of military power. In fact, the United States planned a regulated rearmament of Japan.[215] The United States aided in Japan's rebuilding of potential war factories for a number of reasons. First, the Allies could not gain an ally in Japan by suppressing her industries, assuming that such industries could be suppressed.[216] Second, the United States believed that a rebuilt Japan posed no serious threat to the Allies because Japan understood that it was in her own best interest to be allied against the Communist nations.[217] Third, Japan would be a more valuable ally if she had a strong military force.[218]

On the other hand, the Persian Gulf War Cease-Fire Agreement is designed to allow for the reconstruction of Iraq if she pays reparations to the UN, thus, the Agreement makes Iraq's compliance with UN resolutions to be in Iraq's best interest if Iraq desires

205. *Id.*, art. 7(a).
206. *Id.*, art. 9.
207. *Id.*, art. 12(a).
208. *Id.*, art. 13(a)(c).
209. *Id.*
210. *Id.*, art. 18(a).
211. F.S. DUNN, *supra* note 2, at 150.
212. *Id.* at 145.
213. *Id.* at 155.
214. *Id.* at 153.
215. *Id.* at 155.
216. *Id.*
217. *Id.* at 156.
218. *Id.* at 155-156.

aid in restoring her country. The Coalition forces want to aid in the restoration of Iraq to ensure a new world order, a lasting peace, available oil, and reparations. President Bush has envisioned "a new world order . . . in which a credible United Nations can use its peacekeeping role to fulfill the promise envisioned of the U.N.'s founders."[219]

However, the Agreement must maintain the peace won by the Coalition forces.[220] This may be a difficult task. If the Agreement fails to aid in successfully rebuilding Iraq's economy, then the consequences of that failure coupled with a failure to reassimilate Iraq among peaceful nations may ignite another war.[221] The Agreement attempts to reduce the reoccurrence of war in the Middle-East by limiting Iraq's arms. However, the unhealed divisions in the Arab world, coupled with economic needs that may not be solved by oil revenues, have set the stage for war to resurface.[222]

A dangerous alliance between Iraq and Iran may form because both nations have grown alienated from other nations in the region and have severely damaged economies.[223] Iraq has a large war debt from both her wars with Iran and Kuwait.[224] Iran's economy also has been ravaged by war with Iraq.[225] Meanwhile, Saudi Arabia has initiated an arms build-up,[226] and Israel antagonizes by flying through Iraqi airspace.[227] Granted, the United States' military presence in the region presently deters conflict from arising.[228] But how long can the United States maintain a substantial military presence in the Middle East before she is forced to withdraw as the result of public sentiment?[229] The chance to maintain a new world order is complicated, moreover, by the need for available oil. The Persian Gulf War demonstrated that the world oil market is interdependent. An embargo of Iraqi and Kuwaiti oil, in conjunction with the Soviet Union's decrease in production on account of political unrest, created a sharp rise in oil prices.[230] The elevated oil prices aggravated a world mired in a recession.[231] The Agreement thus aims not to unduly antagonize the Iraqis because of their influence and power in

219. Grammas, *supra* note 7, at 1.
220. *See* Askari, *supra* note 16, at 15.
221. *See id.*
222. *See id.*
223. *See id.*
224. *Id.*
225. *Id.*
226. *Id.*
227. *See* Rowe, *U.N. Flights to Continue Despite Iraqi Warning; Baghdad Complains About Israeli Aircraft*, Wash. Post, Oct. 17, 1991, at A47 [hereinafter *U.N. Flights*].
228. Askari, *supra* note 16, at 15.
229. *Id.*
230. *Oil Prices Jump*, *supra* note 150.
231. *See, e.g. In The Picture*, THE ECONOMIST, Oct. 26, 1991, at 79.

the oil industry.[232] However, eliciting substantial cash reparations from the thoroughly defeated yet proud Iraqis may antagonize Iraq. Iraq may then retaliate by constricting the world's available oil supply.[233]

The Agreement uses a number of ways to prompt Iraqi compliance. Perhaps the most important way is by maintaining an embargo against Iraq until she complies with the Cease-Fire's reparations requirements.[234] The Cease-Fire Agreement has also encouraged compliance through efforts to strengthen ties among Iraq and the nations of the Coalition. For example, the Agreement provides that Iraq shall recognize the boundaries between her and Kuwait as set out in a treaty among them in 1964.[235] Also, the UN invited Iraq to reaffirm her obligations under the Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous, or Other Gases, and of Bacteriological Methods of Warfare.[236] Then, Iraq was invited to reaffirm her obligations under the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968.[237]

The Agreement tries to establish a lasting peace by encouraging the ouster of President Hussein. His leave of office was designed to appear as if it was in the best interest of Iraqi security. The United Nations will monitor Iraq's military developments as long as Hussein is President of Iraq.[238] President Hussein would not be a stabilizing influence in a new world order. He demonstrated his volatility by invading Kuwait after concluding an eight-year war with Iran. Consequently, President Bush has called for President Hussein's removal.[239] In addition, the Coalition has maximized and utilized post-war conditions to encourage Iraq to comply with the Agreement. Compliance would end the embargo and allow Iraqi industries to restore themselves. One thing that may happen is the questionable prospect of Iraq finding a buyer of her oil once the embargo is removed, may encourage an early compliance. However, even if the embargo were removed, Iraq may still have to wait a substantial period of time before restoration could be effectuated.[240] For example, the UN has provided for procedures in which Iraq can sell regulated amounts of oil to help finance the Post-Persian Gulf War reconstruction.[241] A senior UN official conceded, however, that the UN regula-

232. *See supra* text accompanying notes 72 & 73.
233. *See supra* text accompanying notes 149-170.
234. *See supra* text accompanying notes 124-26.
235. Resolution 687, *supra* note 56, ¶2.
236. *Id.*, ¶7.
237. *Id.*, ¶11.
238. *Baghdad Complains*, *supra* note 195, at A6.
239. *Better Cooperation*, *supra* note 153, at A14.
240. *See U.N. Flights*, *supra* note 227, at A47.
241. *Oil Minister*, *supra* note 149, at A9.

tions may discourage prospective buyers from purchasing Iraqi oil because oil — free of restrictions — is available from other nations.[242]

Specifically, a buyer of Iraqi oil, in contrast with a buyer of oil from another nation, must incur the additional cost of procuring approval from both the buyer's nation and from the UN Security Council's Sanctions Committee.[243] In addition, many buyers will be discouraged from contracting for Iraqi oil because a substantial risk exists that the business relationship will be severed because of political unrest. For example, Iraq may become involved in another war with either another nation or with Iraqi Kurdish rebels.[244] Thus, Iraq may not be able to turn on the faucet of recovery immediately after the UN embargo is lifted. Consequently, Iraq would be encouraged to bring an earlier end to the embargo to initiate as soon as possible, what may already be a delayed recovery.

Other factors also aggravate the prospects of a successful recovery for Iraq. For instance, Iraq may not be able to earn the necessary revenue from oil sales to handle her large debt[245] and reparation demands.[246] This is because there may be an excess of oil within two or three years that will drive down the price of oil.[247] One reason for the potential excess is that Saudi Arabia has indicated during a recent Organization of Petroleum Exporting Countries (OPEC) meeting that Saudi Arabia would produce as much oil as possible, even if other OPEC nations objected.[248] When UN oil export sanctions are lifted, moreover, Iraq plans to approximately double her pre-war oil production by the year 1995.[249] Iran also aims to increase her oil production to heal her war-ridden economy.[250] Kuwait oil production should also bounce back within the next few years.[251] The net increased and unrestricted production of oil threatens to make the commodity more common and less valuable in rebuilding Iraq's economy.

The Persian Gulf War Cease-Fire Agreement has not assisted Iraq in repressing rebellions within Iraq's own borders and has thus increased Iraq's desire to comply with UN resolutions. These rebellions have been encouraged most likely by the weakened state of the Iraqi government following the war, as aggravated by the embargo.

242. *U.N. Flights*, *supra* note 227, at A47.
243. *Id.*
244. *Id.*
245. *See supra* text accompanying notes 157-63.
246. *See supra* text accompanying notes 117-23.
247. Askari, *supra* note 16, at 15.
248. *Id.*
249. *Oil Minister*, *supra* note 149, at A9.
250. Askari, *supra* note 16, at 15.
251. *Id.*

In addition, UN forces have encouraged these rebellions.[252] For example, UN forces led by the United States, protected hundreds of thousands of Kurdish refugees in their return to northern Iraq, where the Kurdish guerrillas control cities in rebellion against the government of President Hussein.[253] Moreover, President Hussein has not invaded Kurdish controlled territories because of the threat of immediate retaliation by the UN air-force that patrols over Iraq.[254] Thus, while the Japanese Peace Treaty aimed to get Japan back on her feet, the implementation of the Cease-Fire Agreement tries to keep Iraq off her feet, and thus, it encourages Iraqi compliance with reparation demands.

Although the Agreement has kept Iraq off her feet, the UN may have avoided moral culpability for the poor post-war conditions among Iraqi civilians by offering aid in a way that maintains the poor conditions, while shifting the blame to Iraq. Arguably, public sentiment could force the UN embargo to end prior to Iraqi compliance if the embargo were seen as the direct cause of extreme suffering among Iraqi civilians. The UN may be conditioning desperately needed medical and food aid to Iraq upon another opportunity to make the Hussein government appear inadequate to provide for the Iraqi people. President Hussein is unlikely to accept the UN's bargain.

As of 1992, Iraq is in dire need of food and medicine.[255] The allied bombings and embargo has created health and malnutrition problems for hundreds of thousands of Iraqis, according to Iraq.[256] Since the Persian Gulf War started, Iraqis have real earnings of 7% of the prewar level, but the food price index has increased by 2000%.[257] Nearly one million Iraqi children are malnourished.[258] Before the war, the mortality rate for children under five years of age was about twenty eight per 1,000; between January and August 1991 the mortality rate rose to approximately 104 deaths per 1,000.[259]

Although the United Nations is willing to extend relief, and the Hussein government is willing to accept relief, the two sides have not come to terms with an agreeable method to distribute the aid.[260] Pursuant to Resolution 666, the United Nations only will approve

252. *See Economic Pressure, supra* at note 107.
253. *Id.*
254. *Id.*
255. *Blocking Aid, supra* note 58, at 4.
256. *Id.*
257. *Id.*
258. *Id.*
259. Shannon, *U.S. Denies Blame For Malnutrition In Iraq*, L.A. Times, Oct. 23, 1991, at A4, col. 1.
260. *See Blocking Aid, supra* note 58, at 4.

humanitarian food distribution to Iraq and Kuwait if the food is given out directly to the Iraqi people by approved international groups.[261] However, Iraq only will accept aid if the Iraqi government can distribute and ration the aid directly to the Iraqi people.[262] The Iraqi Minister of Health, Abdul Salam M. Saaid, has refused to allow third parties to give aid to the Iraqi people because the relief is designed to quiet anti-embargo sentiments in the United States.[263] He also indicated that the Iraqi government wanted to distribute the aid themselves to avoid creating both riots and the appearance that the Iraqi people are beggars.[264]

Iraq has legitimate political concerns of a sovereign nation. However, the UN may be more concerned with the political effect than the practical effect of aid distribution. The UN, by starving Iraq with an embargo and rescuing her with charity, may be trying to build a bond between the Iraqi people and anti-Hussein forces, while simultaneously lowering the respect of the Iraqi people for the Hussein government. By avoiding culpability for causing direct suffering to Iraqi civilians, the UN can use the embargo to enforce compliance with the Cease-Fire Agreement.

V. Conclusion

The Cease-Fire Agreement may be better designed than the Japanese Peace Treaty for effectuating reparations for the victors. This is despite the fact that the Agreement and the Treaty are similar in many ways. The source of the superior design of the Agreement, however, lies in that the success of restorations under the Treaty had to precede reparations, while under the Cease-Fire Agreement reparations must precede restoration.

The Treaty enticed Japan to choose a free-market economy over a Communist system by initiating restoration of the Japanese economy.[265] The Allies availed Japan of new markets and freedom in industrial development.[266] The Allies did not receive substantial financial reparations from Japan, other than winning her alliance against the Communists.[267]

In contrast, the Coalition is enticing Iraq to comply with the Agreement by withholding reconstruction.[268] The United Nations Embargo will not be lifted, and thus, Iraq's economic recovery will

261. Chic. Trib., Feb. 28, 1991, at 5.
262. *See Blocking Aid*, *supra* note 58, at 4.
263. *Id.*
264. *Id.*
265. F.S DUNN, *supra* note 2, at 144 *passim.*
266. *See supra* text accompanying notes 198-215.
267. *See* F.S. DUNN, *supra* note 2, at 152.
268. *See supra* text accompanying notes 124-28.

be severely limited until Iraq complies with the Agreement. The Coalition hopes to achieve its goals of a new world order and a lasting peace, available oil, and financial reparations.

The Agreement does not hand over restoration to the losing party as freely as the Japanese Treaty did. The victors can more carefully control the payment of reparations by the losing party because the losing party must conform to the victor's choice of a *quid pro quo*. To be sure, stronger control of reparations payment does not necessarily translate into better effectuation of reparations. For instance, perhaps Secretary of State Dulles was correct in claiming that the cost of seeking financial reparations exceeded what could be collected from a losing nation.[269] The Japanese Peace Treaty pursuant to Dulles' reasoning aimed at less control of the conquered state to better develop a political alliance.

The Agreement, however, can also accomplish the political goal of creating a new world order in which nations will be deterred from violating international law for fear of retaliation from a powerful coalition of armed forces.[270] The regulation of Iraq's or a similar nation's behavior will encourage them to rationalize their actual behavior to bring them into spiritual as well as physical alliance with international law.

Adam Andrew Levy

269. F.S DUNN, *supra* note 2, at 151-152.
270. *See supra* text accompanying notes 179-180.