

# Economic sanctions: legal and policy constraints

by  
**ANNA SEGALL**

**I**N its first 45 years, the United Nations Security Council adopted resolutions on economic sanctions in only two cases: Rhodesia (1966) and South Africa (1977). Since the end of the Cold War, the Security Council has increasingly resorted to collective economic sanctions. Sanctions have been imposed on Iraq, the former Yugoslavia, Haiti, Somalia, Libya, Liberia, Angola, Rwanda and Sudan. As can be seen from these examples, UN sanctions may be imposed in peacetime as well as in times of armed conflict.

In recent years humanitarian organizations, including the International Committee of the Red Cross, have become concerned about sanctions, particularly comprehensive trade sanctions, because of their humanitarian consequences. During their field operations, these organizations have been able to observe the severe humanitarian consequences of some of the sanctions regimes mentioned above. Sanctions may adversely affect not only the humanitarian situation of the population of the target State but also the delivery of humanitarian assistance.

Because of the increasing frequency with which the international community resorts to economic sanctions and because of their humanitarian consequences, it is important to examine the legal framework within which sanctions may be imposed, legal limitations on their imposition and policy reasons for calling for limitations on the Security Council's exercise of its power to impose sanctions.

---

ANNA SEGALL is a member of the ICRC Legal Division. The views expressed in this article are those of the author and do not necessarily reflect the views of the ICRC.

## **Legal framework — Chapter VII of the United Nations Charter**

The Security Council can call for collective economic sanctions under Article 41 of the UN Charter if it has first determined, under Article 39, the existence of a threat to the peace, breach of the peace, or act of aggression, and if the sanctions are imposed to maintain or restore international peace and security.

Before reviewing the legal and policy considerations limiting the Security Council's power to impose economic sanctions, it is important to put the Council's sanctions power in its legal and political framework. The purposes for which the United Nations was established are set out in Article 1 of the Charter. The principal purpose is undoubtedly the maintenance of international peace and security, which Article 1.1 envisages as occurring through the procedures set out in Chapter VI for the pacific settlement of disputes or the collective enforcement measures provided for in Chapter VII.

If the Security Council determines the existence of a threat to the peace, breach of the peace, or act of aggression, it shall make recommendations or decide on measures to maintain or restore international peace and security.<sup>1</sup> These may be measures under Article 41 “not involving the use of armed force”, such as economic sanctions, or measures under Article 42 involving “such [military] action (...) as may be necessary to maintain or restore international peace and security”.

## **Limitations on sanctions**

### **Under the UN Charter and international law**

There is an argument that the Security Council is not obliged to give effect to human rights law or international humanitarian law when it imposes collective economic sanctions under Article 41 of the UN Charter. This argument is based on the wording of Article 41,<sup>2</sup> which

<sup>1</sup> Charter of the United Nations, Article 39.

<sup>2</sup> Article 41 of the UN Charter reads as follows: “The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United

Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations”.

appears to give the Security Council unfettered power in relation to the imposition of economic sanctions (provided the threshold requirement of a threat to the peace, breach of the peace or act of aggression is satisfied and the purpose of the sanctions is to maintain or restore international peace and security), and on Articles 1.1, 25 and 103 of the Charter.<sup>3</sup> This interpretation suggests not only that collective enforcement measures taken by the Security Council can override the separate treaty obligations of Member States under international human rights and humanitarian law, but also that the Council is not bound by principles of justice and international law in its application of collective economic sanctions under Article 41.

This argument has not prevailed and it is evident and generally accepted that the Security Council is bound to observe the principles of human rights law and international humanitarian law when designing, monitoring and reviewing sanctions regimes.<sup>4</sup> The power to impose sanctions must be viewed in the context of the UN Charter as a whole and should be exercised in accordance with the purposes and principles of the Charter, which include the promotion of human rights<sup>5</sup> and the prevailing norms of international law.<sup>6</sup>

<sup>3</sup> Article 1.1 of the Charter provides that the purposes of the United Nations are *inter alia* to maintain international peace and security through the use of collective security measures and the promotion of the peaceful settlement of disputes. Article 25 states that "Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter". Article 103 provides that the obligations of Members of the United Nations under the Charter prevail over conflicting obligations under any other international agreement.

<sup>4</sup> There are difficulties with the argument based on the unfettered nature of the power in Article 41 and the language of Articles 103, 25 and 1.1. In relation to Article 103, it is important to note that it applies only to conflicting obligations under any other international agreement. This language does not extend to obligations under customary international law. Many of the obligations under the major human rights and international humanitarian law treaties should

now be regarded as forming part of customary international law.

<sup>5</sup> The preamble to the Charter reaffirms faith in fundamental human rights and in the dignity and worth of the human person. Article 1.3 states one of the purposes of the UN to be to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms for all. Article 55 provides that the UN shall promote universal respect for, and observance of, human rights and fundamental freedoms for all.

<sup>6</sup> The notion that the Security Council should comply with human rights law and international humanitarian law when imposing economic sanctions is confirmed by Article 24 of the Charter, which gives the Security Council primary responsibility for the maintenance of international peace and security (Article 24.1) but requires it to exercise its powers for the maintenance of international peace and security in accordance with the purposes and principles of the UN (Article 24.2).

To determine legal limitations on the imposition of economic sanctions in times of armed conflict, it is necessary to look at the provisions of international humanitarian law and the non-derogable provisions of human rights law. To determine legal limitations on the imposition of economic sanctions in peacetime, it is necessary to look at human rights law. On the basis of human rights law and international humanitarian law, and of elementary considerations of humanity, many authors have argued that a sanctions regime should not bring the standard of living of a significant segment of the population below subsistence level.<sup>7</sup> Along the same lines, others have argued that sanctions may not deprive people of the basic human right to life and survival.<sup>8</sup>

A growing acceptance of this approach — that there are limits to the extent of suffering which sanctions may legitimately cause — can be seen from recent practice and statements of the Security Council and the UN Committee on Economic, Social and Cultural Rights, resolutions on economic sanctions adopted by the 26th International Conference of the Red Cross and Red Crescent, and the Statement of the Inter-Agency Standing Committee on the humanitarian impact of sanctions.

### **Limitations under international law — in times of armed conflict**

International humanitarian law does not refer specifically to economic sanctions, nor deal with their effects on the civilian population. However, when sanctions are imposed in the context of an armed conflict — whether international or internal — general rules on the protection of civilians against the effects of military operations do apply.<sup>9</sup> Thus

<sup>7</sup> See L.F. Damrosch, "The civilian impact of economic sanctions", *Enforcing Restraint: Collective Intervention in Internal Conflicts*, Council on Foreign Relations Press, New York, 1993; and M. Kulissa, "Von Märchen und Mechanismen: Gefahren und Chancen der Sanktionen des Sicherheitsrats", *Vereinte Nationen*, Vol. 3, 1996, pp. 89-96.

<sup>8</sup> G.A. Lopez and D. Cortright, "Economic sanctions and human rights: Part of the problem

or part of the solution?", *International Journal of Human Rights*, Vol. 1, No. 2, 1997, p. 8.

<sup>9</sup> See H.-P. Gasser, "Collective economic sanctions and international humanitarian law — An enforcement measure under the United Nations Charter and the right of civilians to immunity: An unavoidable clash of policy goals?", *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, Vol. 56, 1996, pp. 871-904.

the decision to impose such measures must take international humanitarian law into account, in particular the rules relating to medical and food supplies to different categories of protected persons.

A comprehensive sanctions regime, indeed any regime of sanctions which is capable of affecting the civilian population, must provide for "humanitarian exceptions". This is necessary whether the sanctions are imposed by a State or by the Security Council. States and the Security Council are bound to take into account the relevant rules on the protection of the civilian population, and of vulnerable groups within the civilian population, against the effects of armed conflict.

These rules can be summarized as follows:

### 1. The prohibition on starvation of the civilian population

Civilians may not be deprived of access to supplies essential to their survival; starvation of civilians as a method of warfare is prohibited.<sup>10</sup> It is therefore prohibited to impose a blockade, siege or regime of economic sanctions with the purpose of causing starvation among the civilian population.<sup>11</sup>

### 2. The right to humanitarian assistance

Civilians have a right to receive humanitarian assistance. This right is assured in two ways: by provisions requiring States, subject to certain conditions,<sup>12</sup> to allow the passage of relief goods, and by provisions

<sup>10</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977, Articles 54, 69 and 70; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), of 8 June 1977, Article 14.

<sup>11</sup> The applicability to naval blockades of the prohibition on starvation is affirmed by the 1994 San Remo Manual on International Law Applicable to Armed Conflicts at Sea (San Remo Manual), which, although not legally binding, represents a modern restatement of the laws applicable to naval warfare:

"102. The declaration or establishment of a blockade is prohibited if:

(a) it has the sole purpose of starving the civilian population or denying it other objects essential for its survival; or

(b) the damage to the civilian population is, or may be expected to be, excessive in relation to the concrete and direct military advantage anticipated from the blockade".

Published in *IRRC*, No. 309, November-December 1995, pp. 595-637.

<sup>12</sup> Amongst these conditions, the State allowing passage must be satisfied that there are no serious reasons for fearing that consignments may be diverted from their destination, that there is effective control over the operation, that

allowing humanitarian agencies to provide assistance, subject to the consent of the parties. The provisions differ according to whether the armed conflict is international or non-international.

In *international armed conflicts*, the following rules apply:

- (i) States shall allow the free passage of:
  - medical and hospital consignments and objects necessary for religious worship intended only for the civilian population; and
  - essential foodstuffs, clothing and tonics intended for children under 15, expectant mothers and maternity cases.<sup>13</sup>
- (ii) The rule in paragraph (i) above has been extended by Additional Protocol I of 1977, which provides that humanitarian and impartial relief actions shall be undertaken, subject to the agreement of the parties concerned, if the civilian population is not adequately provided with clothing, bedding, means of shelter, other supplies necessary to their survival and objects necessary for religious worship.<sup>14</sup> The parties to the conflict and all States shall allow and facilitate passage of these relief consignments, equipment and personnel.<sup>15</sup> The parties to the conflict shall protect relief consignments and facilitate their rapid distribution.<sup>16</sup>
- (iii) The ICRC and other impartial humanitarian organizations may, subject to the consent of the parties to the conflict, undertake humanitarian activities for the protection and relief of protected persons.<sup>17</sup>

In *non-international armed conflicts*, the following rules apply:

- (i) Humanitarian and impartial relief actions shall be undertaken, subject to the consent of the State concerned, if the civilian population is suffering undue hardship owing to a lack of the sup-

no definite advantage may accrue to the military efforts or economy of the enemy and that distribution will be carried out under the supervision of the Protecting Power or the ICRC. See Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 (Fourth Convention), Article 23, and Protocol I, Article 70.

<sup>13</sup> Fourth Convention, Article 23.

<sup>14</sup> Protocol I, Article 70.1. Protocol I has not been ratified by two major Security Council powers: the US and France. The French government,

however, has announced its intention to ratify, and the US Annotated Supplement to the Commander's Handbook on the Law of Naval Operations (NW9A) states that the prohibition of starvation as a means of warfare "should be observed and, in due course, recognized as customary law".

<sup>15</sup> Protocol I, Article 70.2

<sup>16</sup> Protocol I, Article 70.4

<sup>17</sup> Articles 9/9/9/10 common to the 1949 Geneva Conventions.

plies essential for its survival, such as foodstuffs and medical supplies.<sup>18</sup>

(ii) The ICRC and other impartial humanitarian organizations may offer their services to the parties to the conflict.<sup>19</sup>

### 3. Relief supplies in naval blockades

The same principles apply to naval blockades, that is:

(i) States must allow the free passage of essential foodstuffs for children, expectant mothers and maternity cases and of medical goods and objects necessary for religious worship for the civilian population generally.<sup>20</sup>

(ii) Humanitarian and impartial relief actions shall be undertaken, subject to the agreement of the parties concerned.<sup>21</sup>

These obligations are stated more forcefully in the San Remo Manual, which provides that the blockading power must allow transit of relief shipments through the blockade.<sup>22</sup> As indicated in the Commentary on the San Remo Manual, however, the issue as to whether such an obligation exists under the Protocol is still heavily debated.<sup>23</sup>

<sup>18</sup> Protocol II, Article 18.2.

<sup>19</sup> Article 3 common to the 1949 Geneva Conventions.

<sup>20</sup> Fourth Convention, Article 23.

<sup>21</sup> Protocol I, Article 70. It should be noted that the expression "subject to the agreement of the parties" does not give the parties absolute freedom to refuse their agreement to relief action. This was made clear at the 1974-1977 Diplomatic Conference, where it was stated that "a Party refusing its agreement must do so for valid reasons". See commentary on Article 70, Protocol I, in Y. Sandoz/C. Swinarski/B. Zimmermann (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC/Martinus Nijhoff, Geneva, 1987, para. 2805.

<sup>22</sup> The relevant provisions of the San Remo Manual are as follows:

"103. If the civilian population of the blockaded territory is inadequately provided with food and other objects essential for its survival, the blockading party must provide for free passage

of such foodstuffs and other essential supplies, subject to:

(a) the right to prescribe the technical arrangements, including search, under which such passage is permitted; and

(b) the condition that the distribution of such supplies shall be made under the local supervision of a Protecting Power or a humanitarian organization which offers guarantees of impartiality, such as the International Committee of the Red Cross.

104. The blockading belligerent shall allow the passage of medical supplies for the civilian population or for the wounded and sick members of armed forces, subject to the right to prescribe technical arrangements, including search, under which such passage is permitted".

<sup>23</sup> Para. 103.2 of the "Explanations". See L. Doswald-Beck (ed.), *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*, International Institute of Humanitarian Law, Grotius Publication, Cambridge University Press, Cambridge, 1995.

#### 4. Relief supplies for occupied territories

In occupied territories, in addition to its duty of ensuring that the civilian population receives food and medical supplies<sup>24</sup> the Occupying Power is under an obligation to accept and facilitate relief operations on behalf of the said population if the whole or part of the population is inadequately supplied.<sup>25</sup> Moreover, all States Parties “shall permit the free passage of these consignments and shall guarantee their protection”.<sup>26</sup> This means that relief consignments for the population of an occupied territory must be allowed to pass through the blockade, and this obligation is further accompanied by an obligation to guarantee their protection. Thus all States concerned must respect the consignments and protect them when they are exposed to danger through military operations.<sup>27</sup>

Paragraphs 2 to 4 above deal with the provisions of the Geneva Conventions and Additional Protocols protecting the supply of essential foodstuffs and other materials to civilians during times of armed conflict. It is interesting to note certain differences between these provisions. First, Article 59 of the Fourth Geneva Convention, Article 70 of Additional Protocol I and Article 18(2) of Additional Protocol II permit *relief actions* in certain circumstances, whereas Article 23 of the Fourth Geneva Convention permits delivery of *certain goods*. Second, delivery of relief consignments under Article 70 of Additional Protocol I and Article 18(2) of Additional Protocol II requires the consent of the parties concerned, whereas delivery of the goods specified in Article 23 or relief sup-

<sup>24</sup> Fourth Convention, Article 55. Protocol I, Article 69.1: “In addition to the duties specified in Article 55 of the Fourth Convention concerning food and medical supplies, the Occupying Power shall, to the fullest extent of the means available to it and without any adverse distinction, also ensure the provision of clothing, bedding, means of shelter, other supplies essential to the survival of the civilian population of the occupied territory and objects necessary for religious worship”.

<sup>25</sup> Fourth Convention, Article 59. The equivalent protection for relief actions conducted to

occupied territories for the additional goods specified in Article 69.1 of Protocol I appears in Article 70.2, which provides that the parties to the conflict and each State party to Protocol I “shall allow and facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel”.

<sup>26</sup> Fourth Convention, Article 59.3.

<sup>27</sup> See the commentary on Article 59 in Jean Pictet (ed.), *Commentary on the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949*, ICRC, Geneva, 1958, p. 322.



plies for the civilian population of occupied territories under Article 59 of the Fourth Geneva Convention does not.<sup>28</sup>

### Limitations under international law — in peacetime

Before considering the rules applicable to peacetime sanctions regimes, which derive from human rights law, it is important to mention that the use of a naval or air blockade to enforce a sanctions regime in peacetime will not necessarily transform a situation from one of peace to one of armed conflict. The stage at which such blockades should be seen as creating an armed conflict is unclear in both practice and doctrine. This is a question of fact and law which needs to be decided on a case-by-case basis. One factor which would clearly be decisive is whether fighting takes place to enforce or secure the blockade.

Human rights instruments recognize the right to life,<sup>29</sup> health,<sup>30</sup> an adequate standard of living, including food, clothing, housing and medical care,<sup>31</sup> and freedom from hunger<sup>32</sup> and impose on States an obligation to work towards fulfilling those rights. From a legal and humanitarian perspective, it can be argued that the Security Council should take those rights into consideration when developing a sanctions regime and should not create sanctions regimes which would deprive people of them.

From a humanitarian point of view, the need to take such rights into account seems self-evident. From a legal point of view, the question is somewhat more complicated. Some authors take the view that the “right to life” protects only against arbitrary deprivation of life through execution, disappearance, torture and the like, and does not extend to deprivation of life through starvation or lack of fulfillment of basic needs

<sup>28</sup> The fact that consent is required does not mean that the decision is left entirely to the discretion of the parties. A party cannot refuse such relief without good grounds. See commentary on Article 70 of Protocol I and Article 18.2 of Protocol II, *op. cit.* (note 21), paras 2805 and 4885 respectively.

<sup>29</sup> Universal Declaration of Human Rights (UDHR), 10 December 1948, Article 25; International Covenant on Civil and Political

Rights (ICCPR), 16 December 1966, Article 6.1; Convention on the Rights of the Child, 20 November 1989, Article 6.1.

<sup>30</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), 16 December 1966, Article 12.

<sup>31</sup> UDHR; Article 3; ICESCR, Article 11.1; Convention on the Rights of the Child, Article 27.1.

<sup>32</sup> ICESCR, Article 11.2.

such as food, basic health facilities and medical care.<sup>33</sup> That the Human Rights Committee does not share this limited view of the meaning of the expression "right to life" is demonstrated by its first general comment on Article 6 of the International Covenant on Civil and Political Rights:

"[T]he Committee notes that the right to life has too often been narrowly interpreted. The expression 'inherent right to life' in Article 6 cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures."<sup>34</sup>

According to this view, a sanctions regime should not deny the population access to the basic and minimum goods and services essential to sustain life.

Even if the expression "right to life" is read narrowly and assumed not to apply to the deprivation of life through lack of essential foodstuffs, it is hard to see how the right to food, particularly the right to be free from hunger, can be so limited. The most important provision regarding the right to food and freedom from hunger is Article 11 of the International Covenant on Economic, Social and Cultural Rights, which reads as follows:

"1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures,

<sup>33</sup> See Y. Dinstein, "The right to life, physical integrity and liberty", L. Henkin (ed.), *The International Bill of Rights*, Columbia University Press, New York, 1981, p. 115.

<sup>34</sup> In 1985 the Human Rights Committee issued a second general comment on the right to life, pointing out that it is a right from which no derogation is permitted even in time of public emergency, describing it as "basic to all human

rights". See B.G. Ramcharan, "The concept and dimensions of the right to life", F. Menghistu, "The satisfaction of survival requirements", and A. Redelbach, "Protection of the right to life by law and by other means", in B.G. Ramcharan (ed.), *The Right to Life in International Law*, Martinus Nijhoff, Dordrecht, 1985; United Nations, *Right to Adequate Food as a Human Right*, UN, New York, 1989.

including specific programmes, which are needed: (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.”

It could be argued that the right to food and the right to be free from hunger impose an obligation on States to supply essential food-stuffs to those in need. Even if this argument is not accepted, at the very least the existence of these rights must mean that it is prohibited to deliberately act in a way which actively deprives individuals of food and causes hunger and/or starvation. As far as the imposition of sanctions is concerned, it would seem an extraordinary result if it were prohibited to starve civilians during an armed conflict but permitted in time of peace.<sup>35</sup>

Parallel to the individual's right to life and food referred to above, the Genocide Convention<sup>36</sup> protects what could be described as a “collective right to life” and would prohibit deliberate starvation of a national, ethnic, racial or religious group if committed with intent to destroy the group, as it would then be subsumed into the definition of genocide.<sup>37</sup> The prohibition of genocide applies in time of peace and in time of war.<sup>38</sup>

It would appear that Security Council practice is tending towards the inclusion of humanitarian exceptions in comprehensive sanctions regimes, whether imposed during armed conflict or in peacetime

<sup>35</sup> Following the reasoning used in the *Corfu Channel Case* (I.C.J. Reports 1949, pp. 22-23) and the *Case of Nicaragua v. United States* (I.C.J. Reports 1986, p. 114), it can be argued that the obligation to provide essential goods and food-stuffs contained in the Geneva Conventions and Additional Protocols and applicable in time of war applies also in peacetime, since the obligations do not derive only from the Conventions themselves but from the general principles of humanitarian law to which the Conventions merely give specific expression.

<sup>36</sup> Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948 (Genocide Convention).

<sup>37</sup> Genocide Convention, Article 3(c). See C. Breining-Kaufmann, *Hunger als Rechtsproblem: Völkerrechtliche Aspekte eines Rechts auf Nahrung*, Schulthess Polygraphischer Verlag, Zürich, 1991, p. 95.

<sup>38</sup> Genocide Convention, Article I.

(see below). In other words, humanitarian concerns will be taken into account whether sanctions are imposed in armed conflict or in peacetime. In situations of armed conflict, these humanitarian concerns are expressed by international humanitarian law. In peacetime, they are expressed through human rights law.

### **Policy arguments for restricting exercise of the Security Council's power to impose sanctions**

#### **Humanitarian organizations and sanctions regimes**

As indicated above, sanctions, particularly comprehensive trade sanctions, are a cause for concern because of their humanitarian consequences. Sanctions may adversely affect not only the humanitarian situation of the population of the target State but also the delivery of humanitarian assistance.

Concerns about the legitimacy and utility of sanctions and about their consequences in humanitarian terms have led certain commentators to criticize the very notion of sanctions. For humanitarian organizations, the question is somewhat more complex. On the basis of human rights law, international humanitarian law and elementary considerations of humanity, humanitarian organizations may certainly argue that there are limits to the extent of the suffering which sanctions may legitimately cause; and that States and the Security Council are bound to observe the principles of human rights and international humanitarian law and elementary considerations of humanity when designing, monitoring and reviewing a sanctions regime.<sup>39</sup>

It is likely, however, that humanitarian organizations — particularly those which are providing, or wish to provide, assistance to a State subject to sanctions — will exercise a degree of caution in making public statements in relation to the sanctions, as may be seen from the discussion below.

<sup>39</sup> It is notions such as these which have led organizations such as the UN Office for the Coordination of Humanitarian Affairs and the Inter-Agency Standing Committee to develop tools for assessing the humanitarian impact of sanctions. See in particular the study by L.

Minneer, D. Cortwright, J. Wagler, G.A. Lopez and T.G. Weiss, *Towards More Humane and Effective Sanctions Management: Enhancing the Capacity of the United Nations System*, Thomas J. Watson Institute for International Studies, Brown University, Providence (RI), 1998.

### Factors to consider when assessing a sanctions regime

In relation to any sanctions regime, two questions arise. The first, a question of law and fact, involves deciding whether the requirements of Article 39 of the UN Charter are satisfied, that is, whether there is a threat to the peace, breach of the peace or an act of aggression, and whether the purpose of the sanctions is to maintain or restore international peace and security. The second, a question of policy and judgement, is whether sanctions in general, or a particular sanctions regime, are "legitimate" when the effect on the population of the target State is considered in terms of international law and humanitarian considerations.

In assessing a particular sanctions regime, many factors are relevant. These can be divided into two categories, which correspond roughly to the two questions raised above. The first consists of "political factors" relating to the original decision to impose a sanctions regime and its likely effectiveness. The second consists of "humanitarian factors" relating to the nature of the sanctions regime, the suffering it causes and the provision it makes for the humanitarian needs of the population of the target State.

The following *political* considerations would need to be considered:

*The nature of the international wrong that the sanctions are intended to remedy.* In this regard, it is important to note that the expression "threat to the peace, breach of the peace, or act of aggression" in Article 39 of the UN Charter is broad enough to include serious violations of human rights where these constitute a threat to the peace. It may be that a stricter sanctions regime may be justifiable if the sanctions are imposed to contain or avoid an actual or threatened conflict than if they are a response to human rights violations.

*The likely effectiveness of the sanctions regime.* The most obvious way of judging the effectiveness of sanctions is in terms of their capacity to alter the conduct of the target State. This is not the only measure of effectiveness, however. Sanctions may be an important tool of international diplomacy, allowing the international community to demonstrate its disapproval of certain types of conduct and its resolve in responding to them.

*The potentially destabilizing effect of the sanctions regime.* The stated objective of a sanctions regime is, ordinarily, to alter the conduct of the tar-

get State. It is important to remember that a further unstated objective, or unintended consequence, of sanctions may be to change the political constitution of the target State. In considering a sanctions regime, it is also necessary to take account of the fact that the sanctions may generate political instability, tensions or violence.

*The attitude of the population of the target State.* In certain cases, the population of the target State has supported the imposition of sanctions notwithstanding the suffering caused by them. This is something which would obviously have to be taken into account in assessing a sanctions regime.

*The drafting of the sanctions resolution.* Any resolution imposing sanctions should be drafted in clear language and specify in precise terms the behaviour expected of the target State so that it is clear what change in behaviour will result in lifting of the sanctions. This is important because prolonged sanctions have a significant potential for causing serious long-term damage to a society.

The following *humanitarian* considerations would need to be considered:

*The degree of suffering caused.* Sanctions regimes range from arms embargoes, limitations on cultural/sporting/social ties or financial restrictions to partial or total trade embargoes. A well-designed sanctions regime would seek to affect those in power (and therefore in a position to effect change) in the target State, rather than the population at large.

Humanitarian organizations will be most concerned by comprehensive trade sanctions, as these have the greatest potential for inflicting suffering on the civilian population of the target State. It is self-evident that any comprehensive regime of trade sanctions will affect the situation of the civilian population. In assessing a sanctions regime, it is necessary to consider the degree of suffering it causes and who is most severely affected (for example, to determine whether efforts have been made to spare the most vulnerable, particularly the young and the elderly). In addition to concrete factors such as shortages of food and medical supplies and problems in the public health system, it may be appropriate to consider the effect of sanctions on the social fabric and on the society's infrastructure.

*Humanitarian exceptions.* Any sanctions regime should provide for humanitarian exceptions to limit the suffering caused among the civil-

ian population. The system of humanitarian exceptions provided for in the sanctions resolution must be effective. While proper implementation of a sanctions regime will require the monitoring of goods shipped to the target State, it is essential to ensure that this does not undermine the humanitarian exemption. An effective humanitarian exception will not be overburdened by complex or time-consuming administrative requirements which would increase the cost of delivery of humanitarian assistance and delay its arrival.

As far as the ICRC and other humanitarian organizations are concerned, it is also essential that the system of humanitarian exceptions does not jeopardize their independence or their capacity to deliver humanitarian assistance.

*Humanitarian assistance.* A sanctions regime should recognize the capacity of States and humanitarian agencies to provide humanitarian assistance in times of armed conflict where permitted by international humanitarian law. If sanctions are likely to result in considerable hardship for the civilian population, a sanctions resolution should require the provision of humanitarian assistance sufficient to ensure that the lives and health of the population are not endangered by the sanctions regime.

*Design and monitoring of sanctions.* The situation of the civilian population in the target State should be taken into account in the design of any sanctions regime. The effects, long- as well as short-term, of the sanctions should be monitored during the regime.

The reason for the imposition of sanctions and the likely effectiveness of a sanctions regime are two factors which must be considered in order to arrive at an intelligent and sustainable position in regard to the regime. In particular, it is essential to bear in mind that under the UN Charter the options open to the Security Council when faced with a threat to the peace, breach of the peace or act of aggression are limited. If the Council wishes to respond to a challenge to international peace and security, it may use measures not involving the use of force, such as economic sanctions. If, however, measures not involving force would be or have proved to be inadequate to restore international peace and security, it can take military action. It may be that economic sanctions are preferable to military action; this will depend on the nature of the sanctions or military action envisaged. Of course, this type of evaluation is of a

military-political nature and humanitarian organizations may wish to avoid commenting publicly on the issue.<sup>40</sup>

In commenting on the humanitarian situation of the population of a State subjected to sanctions, humanitarian organizations must also exercise a degree of caution. They should confine themselves to commenting on situations in regard to which their information is reliable and defensible. Such an organization will also need to consider the likely ramifications of any comment, particularly public comment, it may make on its activities to assist the population of the target State and, in the case of UN sanctions, on its relations with the Sanctions Committee administering the particular sanctions regime. It is imperative to maintain good relations with both the target State and the Sanctions Committee. To achieve this, the organization will have to ensure that all its activities are carried out in a completely transparent manner. From a practical point of view, it is desirable that humanitarian organizations keep the Sanctions Committee fully informed of all their assistance activities and avoid any suggestion that they are trying to “get around” the sanctions regime. As far as the ICRC is concerned, the target State should be fully aware of the ICRC’s role under international humanitarian law, its neutrality, its independence from governments and the United Nations and its capacity to act as a neutral intermediary.

### **Examples of limitations on United Nations sanctions**

#### **UN Security Council practice in Iraq, the former Yugoslavia and Haiti**

This section looks at three cases in which the UN Security Council imposed collective sanctions: the Gulf war, the former Yugoslavia and Haiti. These examples show that the Security Council already consid-

<sup>40</sup> The fundamental principles governing the ICRC, the National Red Cross and Red Crescent Societies and the International Federation of Red Cross and Red Crescent Societies are: humanity, impartiality, neutrality, independence, voluntary service, unity and universality. Many humanitarian organizations are bound by similar principles, as can be seen by the number of organizations

(over 150) which have subscribed to the Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief, adopted at the 26th International Conference of the Red Cross and Red Crescent (Geneva, 1995) and published in *IRRC*, No. 310, January-February 1996, pp. 119-128.



ers that humanitarian exceptions must be provided for when imposing collective sanctions. The examples of Iraq and the former Yugoslavia also demonstrate the importance of cooperation between the Sanctions Committees and humanitarian organizations such as the ICRC.

**Iraq** — In the case of Iraq, Security Council resolution 661 (1990) excludes from the sanctions regime “supplies intended strictly for medical purposes and, in humanitarian circumstances, foodstuffs”. Supplies for medical purposes have thus been exempted altogether, while the import of foodstuffs is permitted, if “humanitarian circumstances” so require, subject to authorization. In resolution 666 (1990), the Security Council set up a procedure whereby the Sanctions Committee had to monitor the situation in Iraq and in occupied Kuwait and, if necessary, grant clearance for the delivery of foodstuffs for the benefit of the civilian population in order to relieve human suffering. The UN Secretary-General was invited to supply the Sanctions Committee with information based on the findings of UN agencies and other organizations, including the ICRC.

In the same context, in April 1995 the Security Council adopted resolution 986 which authorized Iraq to export a certain quantity of petroleum and to sell it on foreign markets. The proceeds of the sale were to be used to “meet the humanitarian needs of the Iraqi population” (“oil for food”). The major part of the funds was to be used to finance the import of “medicine, health supplies, foodstuffs and supplies for essential civilian needs”.

**Federal Republic of Yugoslavia** — In resolution 757 (1992), the Security Council decided to impose comprehensive economic sanctions on the Federal Republic of Yugoslavia, providing that the ban on commercial and financial transactions with the Federal Republic of Yugoslavia did not include “supplies intended strictly for medical purposes and foodstuffs notified to the [Sanctions Committee]”. This is another example of the Security Council’s approach to the special needs of the civilian population of a country under embargo.

In conducting its relief operations, the ICRC initially had to go through complicated and time-consuming authorization procedures, which in some instances delayed the delivery of relief. In the period after April 1993, when resolution 870 was passed tightening the sanctions regime, the ICRC experienced some difficulty in obtaining no-objection

certificates, particularly for items such as fuel, construction materials and water pipes (although no ICRC request was ever turned down).

Over time, a good working relationship was established between the ICRC and the Sanctions Committee and, on 7 February 1995, the ICRC was granted a blanket exemption for all items used in its humanitarian programmes.

**Haiti** — In 1993, through resolutions 841 and 873, the Security Council subjected Haiti to a limited embargo (covering arms and oil and freezing foreign assets). In resolution 917 (1994), the embargo was extended to include all commodities and products with the exception of “supplies intended strictly for medical purposes and foodstuffs” and “other commodities and products for essential humanitarian needs” approved by the Sanctions Committee under the no-objections procedure established pursuant to resolution 841.

### 26th International Conference of the Red Cross and Red Crescent

At the 26th International Conference of the Red Cross and Red Crescent (Geneva, 1995), which brought together 138 States, 165 National Societies, the ICRC and the International Federation of Red Cross and Red Crescent Societies, a resolution dealing with sanctions was adopted by consensus. This resolution, addressed to States and the Movement, is important as it demonstrates that States are aware of the need to take the humanitarian consequences into account when imposing sanctions.<sup>41</sup>

<sup>41</sup> 26th International Conference of the Red Cross and Red Crescent, Resolution 4: *Principles and action in international humanitarian assistance and protection*.

“F. With regard to the humanitarian consequences of economic sanctions [the 26th Conference of the Red Cross and Red Crescent] ;

1. encourages States to consider :

(a) *when designing, imposing and reviewing* economic sanctions, the possible negative impact of such sanctions on the humanitarian situation of the civilian population of a targeted

State and also of third States which may be adversely affected by such measures,

b) *assessing* the short- and long-term consequences of United Nations-approved economic sanctions on the most vulnerable, and *monitoring* these consequences when sanctions have been applied,

(c) *providing*, including when subject to economic sanctions, and to the extent of their available resources, relief for the most vulnerable groups and the victims of humanitarian emergencies in their territories ;

### General Comments 8 and 12 of the UN Committee on Economic, Social and Cultural Rights (4 December 1997 and 5 May 1999)

In its General Comment No. 8 on the relationship between economic sanctions and respect for economic, social and cultural rights, the Committee highlighted the fact that States and organizations applying economic sanctions must always take full account of the provisions of the International Covenant on Economic, Social and Cultural Rights.<sup>42</sup> The Committee emphasized that attention should be focused on the impact of sanctions on vulnerable groups and that human rights protection must be incorporated into the design and monitoring of all sanctions regimes.

In its General Comment No. 12 on the right to adequate food, the Committee outlined the normative content of Article 11 of the Covenant and stated that:

“States Parties should refrain at all times from food embargoes or similar measures which endanger conditions for food production and access to food in other countries. Food should never be used as an instrument of political or economic pressure.”<sup>43</sup>

### Statement by the Inter-Agency Standing Committee to the Security Council on the humanitarian impact of sanctions (29 December 1997)

The Inter-Agency Standing Committee on the humanitarian impact of sanctions, established pursuant to General Assembly resolution 46/182 of 19 December 1991, includes representatives of UN organizations and intergovernmental and non-governmental organizations active

2. *calls upon* States to permit relief operations of a strictly humanitarian character for the benefit of the most vulnerable groups within the civilian population, when required by international humanitarian law ;

3. *calls upon* the ICRC, the International Federation and National Societies to contribute to the reduction of the undesirable side-effects of sanctions on the humanitarian situation of civilian populations, through assessing the impact thereof and providing relief to the most vulnerable persons, in accordance with their

respective mandate. “See *IRRC*, No 310, January-February 1996, pp. 73-74.

<sup>42</sup> UN Committee on Economic, Social and Cultural Rights, General Comment No. 8: *The relationship between economic sanctions and respect for economic, social and cultural rights*, E/C. 12/1997/8, 4 December 1997.

<sup>43</sup> UN Committee on Economic, Social and Cultural Rights, General Comment No. 12: *The right to adequate food*, E/C. 12/1999/5, 5 May 1999, para. 37.

in humanitarian assistance operations. In its Statement of 29 December 1997, the Committee stressed the need for human rights law and international humanitarian law to be taken into account in the design of sanctions regimes and reaffirmed its view that sanctions should not impede the work of humanitarian organizations providing humanitarian assistance to the civilian population of targeted countries.

**Note by the President of the Security Council: Work of the Sanctions Committee (29 January 1999)**

In his Note of 29 January 1999 on the work of the Sanctions Committee, the President of the Security Council set out practical proposals to improve the work of sanctions committees.<sup>44</sup> According to these proposals, which were accepted by all members of the Security Council, sanctions committees should:

- establish appropriate arrangements to improve the monitoring of sanctions regimes and the assessment of their humanitarian consequences for the population of the target State and their economic consequences for neighbouring and other States;
- hold periodic meetings for discussions on the humanitarian and economic impact of sanctions;
- monitor, throughout the sanctions regime, the humanitarian impact of sanctions on vulnerable groups, including children, and make required adjustments of the exemption mechanisms to facilitate the delivery of humanitarian assistance;
- seek to utilize the expertise and practical assistance of Member States, UN agencies, regional organizations and all humanitarian and other relevant organizations.

Other proposals were that:

- UN agencies, humanitarian organizations and other relevant organizations should benefit from special, simplified procedures in requesting humanitarian exemptions;
- consideration should be given as to how humanitarian organizations could apply for humanitarian exemptions directly to the sanctions committees;

<sup>44</sup> S/1999/92 of 29 January 1999.

- certain goods such as foodstuffs, pharmaceuticals and medical supplies, basic medical and agricultural equipment, and basic or standard educational items should be exempted from UN sanctions regimes.

### **Conclusion**

In conclusion, resort to economic sanctions now appears to be an established part of the international community's response to situations involving violence or a risk of violence. Such sanctions are legal in terms of international law, provided they comply with applicable rules of human rights and international humanitarian law. This means that sanctions regimes must be crafted in such a way that they do not endanger the lives or health of the population of the target State. They must provide for humanitarian exceptions to limit the suffering caused to the civilian population and to comply with human rights and international humanitarian law. Furthermore, sanctions regimes must be monitored, throughout their duration, to ensure that they do not cause undue suffering for the population of the target State and that the exemption mechanisms permit the delivery of humanitarian assistance.

●

## Résumé

### **Sanctions économiques : contraintes juridiques et politiques**

par ANNA SEGALL

*Depuis la fin de la guerre froide, le Conseil de sécurité des Nations Unies a décidé à plusieurs reprises d'imposer des sanctions économiques à des États qui ne respectent pas une décision prise en vertu du chapitre VII de la Charte. Les exemples les plus flagrants sont les sanctions économiques décidées dans le contexte des conflits du Golfe (Irak) et des Balkans (ex-Yougoslavie). Or, ces sanctions affectent très directement les conditions de vie de la population civile du pays frappé par l'embargo. Il est donc nécessaire d'examiner quelles sont les limites à ne pas dépasser, pour des raisons humanitaires. L'auteur analyse séparément les règles internationales qui déterminent ces limites, d'une part, pour les sanctions prises en temps de paix et, d'autre part, pour celles en temps de conflit armé. Le texte passe ensuite en revue les dispositions pertinentes du droit de la Charte, du droit des droits de l'homme et du droit international humanitaire. Une analyse des facteurs politiques, économiques et sociologiques à prendre en compte lors de sanctions économiques conduit à la conclusion que la décision d'imposer celle-ci ne doit pas mettre en péril la survie de la population civile. Le respect des obligations relatives aux actions de secours est d'ailleurs un élément essentiel de tout régime de sanctions imposé par le Conseil de sécurité.*