

*The Humanitarian Policy Group and the Relief and Rehabilitation Network at the  
Overseas Development Institute, London.*



# **Sanctions: The Current Debate**

*A Summary of Selected Readings*

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## Humanitarian Policy Group (HPG)

HPG's objective is to improve policy and practice in the response to conflict, instability and associated humanitarian needs.

HPG has grown rapidly in recent years, in size, influence and repute. The group now comprises 6 full-time research staff and 6 support staff, and has a growing network of research associates. In 1994, HPG launched the Relief and Rehabilitation Network (see below), which is recognised as a serious contributor to the debate on humanitarian issues from a practical stand-point. The influence of the Active Learning Network on Accountability and Performance, established in 1997, is growing, and now has a permanent membership of approximately 50 policy-makers. HPG continues to provide independent rigorous analysis to inform the policies and practice of donor governments and non governmental organisations. HPG has a strong track record in evaluation work. In a recent peer review, the HPG-led Study III of the multi-donor evaluation of the international response to the Rwanda crisis was hailed as 'a seminal watershed' and the 'single most influential piece of work this decade'. The findings of the peer review highlighted the high quality and independent nature of HPG's analytical work, which remains strongly rooted in field-based experience. The group enjoys high credibility with policy-makers, particularly because of its proven ability to link practice and academic analysis.

## Relief and Rehabilitation Network (RRN)

The RRN was launched in 1994 as a unique mechanism for the professional exchange of information regarding complex political emergencies. The RRN seeks to promote good practice and to contribute to individual and institutional learning within the humanitarian community by providing access to information relevant to both field-based and HQ personnel. The RRN's publications are currently read by over 2,500 individuals based in more than 80 countries, who represent over 500 different organisations.

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# Background

This document is the second part of the conference report entitled *Can Sanctions be Smarter*, sponsored by the UK's Department for International Development. Organised by the Humanitarian Policy Group and the Relief and Rehabilitation Network, the conference was held in London on 16–17 December 1998. The first part of the report contains an analytical summary of the conference proceedings.

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# Sanctions as a Foreign Policy Tool

*Hufbauer, G., Schott, J. & Elliott, K.A. (1990)*

## **Economic Sanctions Reconsidered: History and current policy**

*Washington D.C., Institute for International Economics (2<sup>nd</sup> edition, 1<sup>st</sup> edition in 1985).*

This is still the most comprehensive analysis of the use of economic sanctions for foreign policy purposes since World War One. It reviews 116 cases in which sanctions have been employed, mostly by the USA but by other countries as well. Using a consistent set of criteria the study attempts to measure the effectiveness of the sanctions in achieving their foreign policy objectives. Effectiveness is understood as the target country conforming to the sanctions' sender's demands in the sanctions episode at hand. Sanctions can be declared for other purposes than coercing a change in the target country's behaviour or policies e.g. to demonstrate resolve to one's domestic constituency, to express outrage or to punish. In that sense sanctions may never have been intended to 'succeed' in terms of changing the target country's behaviour. The outcome of the study is that, overall, in 34% of the cases, sanctions have made a contribution to achieving the desired goal. The success rate of sanctions varies according to the specific policy goals with, for example, a higher success rate (52%) where they were intended to cause destabilisation, and a lower one (20%), where they were intended to cause military impairment. The success rate for sanctions with 'high policy goals' was only 23%. Countries most likely to comply under sanctions are those that are small and already experiencing significant problems, and that are erstwhile friends and close trading partners – that is they value the relationship with the sender country. Sanctions that bite and that are implemented quickly are also seen as more effective; there is an inverse relationship between the duration and the success of sanctions. Sanctions that impose a high economic cost on the sender country are not recommended. Financial sanctions are less costly to the sender country, and have a better track record where they aim at modest goals. In a number of cases the effectiveness of sanctions could not be established due to the importance of the use of force, overtly or covertly. The sample also shows a declining success rate: almost half of those initiated

before 1973 succeeded, as against just under a quarter of those initiated post-1973. The drop in the success rate however affected sanctions for modest policy goals; the success rate for sanctions with major policy goals actually increased. The declining rate of success also holds for unilateral US sanctions; sanctions imposed by coalitions actually increased their success rate after 1973. This is attributed mainly to the growing openness of the international system, with countries developing stronger and more diversified economies, and to the relative decline in the hegemony and hence high leverage, that the US enjoyed in the recovery years after World War Two. The authors conclude with the warning that sanctions should be carefully tailored to the objectives they are intended to achieve, and to the conditions of the target country, and that thought should be given beforehand to the possible unintended consequences and costs. ♦

*Hufbauer, G. & Winston, E. (1997)*

## **Smarter Sanctions: Updating the economic weapon**

*in National Strategy Reporter 7(2)1-5.*

The article advocates the use of 'smart sanctions' that would reduce the costs to sanctioning countries and unnecessary humanitarian harm to the populations in the target country. Examples given are the denial of visa for 600 Haitian social and military leaders (1994), or for Liberian faction leaders and their associates (1996), the ban on the supply of arms and petroleum products to UNITA (1993) and the US blacklisting of individuals and companies with known links to the Cali drug cartel in Colombia (1996). The authors however remind us that sanctions alone stand a low probability of achieving most foreign policy objectives and that 'smart' sanctions should not be so limited that they undermine the chance for success. Moreover selective trade and financial sanctions are more difficult to enforce than comprehensive economic sanctions. They also require a fine-tuned knowledge of the target country: 'smartness' implies not only 'targeted' but also that the sanctions are underpinned by appropriate analysis of the sensitivities and vulnerabilities of the target elite. ♦

*Dashti-Gibson, J., P. Davis & B. Raddiff (1997)*

## **On the Determinants of the Success of Economic Sanctions: an empirical analysis**

*American Journal of Political Science 41(2)608-618.*

The authors reexamine the database of Hufbauer, Schott and Elliott. They point out two problems in the methodology used by their predecessors: the inevitable element of judgment in assigning the 'success scores' for each sanctions episode, and the inclusion of a score for the degree to which sanctions contributed to the policy outcome. The latter is not to be pre-judged but is precisely what needs to be estimated. They therefore opt to only maintain the policy result as the dependent variable in their statistical analysis. The outcome of their statistical modelling points at three key elements affecting the 'success' of sanctions: the goals of the senders, the political and economic strength of the target and the use of financial sanctions. If the aim of the sender is only to destabilise the target, then the greater the cost imposed on the target, the shorter the sanctions episode and the more unstable the target, the higher the probability that the sanctions will succeed. None of these variables however remains statistically significant if the goal of the senders is more ambitiously to effect policy change. Indeed over time there is a decreasing success rate for sanctions which aim to effect policy change in the target. At the same time however, the use of financial sanctions which target the elites more, increases the probability of success. The concept of financial sanctions, as used in the database, is however quite broad. There is a need for more specific detail and a more refined operationalisation of their concept of financial sanctions. ♦

*Pape, R. (1997)*

## **Why Economic Sanctions do not Work** *in International Security 22(2)90-136.*

The author critically re-examines the Hufbauer, Schott, Elliott (HSE) database for evidence of the independent usefulness of sanctions, and comes to very different conclusions. First of all he introduces a finer categorisation of international economic pressure or 'economic statecraft': the purpose of economic sanctions is to coerce the target government to change its political behaviour. Trade wars on the other hand intend to make the target state agree on terms of trade more favourable to the coercing state. Finally economic warfare seeks to weaken the military capability of the target state, either in a peacetime arms race or in an ongoing war. The determinants of success for the different categories of goals are not the same. Pape argues that of the 40 successes claimed by Hufbauer et al, 6 did not qualify as instances of economic sanctions but are trade disputes. In terms of economic sanctions, he proposes three criteria for success: the target state conceded to a significant part of the coercer's demands; economic sanctions were threatened or actually applied before the target changed its behaviour; and there is no more-credible explanation for the target's change of behaviour. On the basis of these criteria, Pape argues that in 8 other of the claimed 40 successes, the target state never conceded to the coercer's demands, and 3 other cases are indeterminate. The largest category of error is represented by 18 cases that were determined by the use of force which was both sufficient and necessary to cause the outcome. The failure to consider force as alternative explanation is held to be the most serious problem in HSE's work. Together with the elimination of cases because of definitional problems, only five cases in the database are retained as successes of economic sanctions. The study highlights the vital importance of detailed historical research on the motives that actually shaped the behaviour of the target authorities, in order to be able to judge whether the impact of sanctions ranked high among these or not. ♦

Haass, R. (ed.) (1998)

## Economic Sanctions and American Diplomacy

222 pp. New York, Council on Foreign Relations.

Notwithstanding indications of their limited effectiveness, US economic sanctions, for a wide range of purposes (other than trade wars), have increased in frequency in the post-Cold War period, and are more and more defining or dominating international relationships and policies. The popularity of sanctions in US foreign policy is attributed to a number of factors: they appear a proportional response to a challenge in which the interests at stake are judged to be less than vital and the use of American force is not felt to be warranted. Sanctions are also an 'expressive tool', they signal official displeasure, thereby reinforcing a commitment to an internationally accepted norm but also satisfying a domestic political need. Sanctions are a low risk, low cost way of showing to be 'doing something'. The 'popularity' of sanctions in the US is also associated with a shift in influence over foreign policy from the executive to Congress. Single-issue constituencies are becoming increasingly strong in American politics and Congress is sensitive to those. Sanctions then are often introduced by Congress legislation. This reader presents the case studies of China, Cuba, Haiti, Iran, Iraq, Libya, Pakistan and the Former Yugoslavia. The editor concludes that sanctions meant to punish are intrinsically 'successful' in that the initiative remains with the sender. Threatening sanctions to deter unwanted behaviour may have little effect if the area of concern is of major importance to the target. Sanctions to coerce the target authorities are rarely effective, as they leave the initiative in the hands of the target which may decide to hold firm. The sender(s) then are faced with the options of dropping the sanctions, maintaining

sanctions despite a lack of the desired effect, or turning to military force. Another conclusion is that sanctions are unlikely to coerce authoritarian regimes and they may actually increase nationalistic support for the regime and work against forces promoting political pluralism. Unilateral sanctions are rarely effective, may irritate allies and carry a significant political cost if allies are threatened with secondary sanctions for not supporting the unilateral ones. Sanctions are held to be more effective when imposed with a credible threat or actual use of force. Finally, it is observed that sanctions are easier to introduce than to lift, as the problem that provoked the sanction may diminish but not disappear. The book concludes with a number of specific recommendations for US policy-makers. One of these is that sanctions should not be used as an 'off-the-shelf' tool of foreign policy, but subjected to the same rigorous considerations as the deployment of military force. Another is to avoid the gradual introduction of sanctions that allow the target to adapt. This recommendation does not converge easily with another one that the US should seek multilateral support for its sanctions and avoid unilateral ones. It is also proposed to develop a sanctions analysis unit within the US intelligence community, to meet the demands created by sanctions policy, notably for 'smart' sanctions. To regain control over sanctions as political tool, it is suggested that US policy makers submit a policy statement to Congress detailing the purpose and authority for sanctions and the criteria for lifting them, and that the executive submits an annual sanctions impact statement to Congress, reviewing the cost-effectiveness of sanctions. The primacy of the executive over foreign policy is to be reaffirmed through granting the president waiver authority, whereas the federal government should also challenge the right of US states and municipalities instituting economic sanctions against individuals and companies operating in their jurisdictions. ♦

Roth, K. (1998)

## Sanctions Legislation Threatens Important Foreign Policy Tool

*Human Rights Watch Website* <<http://www.hrw.org/hrw>>

This is the text of the testimony by the Executive Director of Human Rights Watch to the US Senate Task Force on Economic Sanctions. It takes a critical view of the legislation proposed by Senator Lugar and Congressman Hamilton (Sanctions Reform Act S. 1413) to fine-tune the use of sanctions and regain political control of sanctions by establishing procedural requirements. Roth argues that the bill may complicate the use of sanctions to such a degree that it eliminates an important tool for the promotion of human rights and other US foreign policy interests. Roth first asserts that the promotion of human rights should be a principal goal of US foreign policy, and that conditionalities and sanctions, threatened or applied, are a legitimate instrument for that purpose. Roth sees a place for targeted sanctions such as the freezing of foreign assets, and denying visa and residency permits to members of abusive elites. He holds that US official aid and loans from international financial institutions can and should be made conditional on good governance. He opposes generalised sanctions that themselves violate norms of international human rights or humanitarian law. Hence Roth supports the bill in its proposal for humanitarian exemptions, without any restrictions on medicine, medical equipment or food, to be delivered through aid agencies. One critique of

the Sanctions Reform Act is that it unduly prioritises US commercial interests over human rights interests. The analysis required prior to the imposition of sanctions should not only consider the likely impact on US commercial interests, but also on human rights in the country concerned – also if sanctions would not be imposed. Moreover the bill is more concerned with maintaining the credibility of the US as a business partner in exempting deals contractually agreed before the sanctions were imposed, than with the sanctity of human life. He argues that commercial and human rights interests in the medium-term are convergent: a stable and well-governed society provides a better business environment, and will lead to a level playing field by ensuring trading partners' respect for basic labour rights. Another major critique of the proposed Sanctions Reform Act is that it will create a procedural nightmare that will prevent the US government from acting quickly and decisively and sending an immediate message when certain behaviour or policies are unacceptable. In this respect, the bill also unduly confuses limitations on trade with restrictions on aid. The quick imposition of conditionality on aid, or its suspension, should be safeguarded. Finally the bill proposes that sanctions automatically terminate after two years, unless they are specifically authorised. This proposition is rejected. Sanctions should be tied to clear and identifiable benchmarks and their lifting should be tied to concrete improvements in the conditions for which they were imposed. The bill leads too much to an 'all-or-nothing' approach, that prevents using sanctions as a carrot, not only as a stick. ♦



van Bergeijk, P. (1997)

### **Economic Sanctions, Autocracy, Democracy and Success**

21 pp. A paper reporting on research conducted at the Economic Policy Directorate's Research Unit of the Netherlands Ministry of Economic Affairs, and presented at the conference on the Effectiveness and Effects of UN Sanctions, in Tilburg, 1997. Website: <Bergerijk@dnb.nl>

Using statistical methods, the author examines 93 cases of economic sanctions between World War Two and the end of the Cold War. Use is made of information contained in three databases: the Hufbauer, Schott and Elliott one referred to on page 1, data on trade linkages derived from the IMF, UN, Eurostat and World Bank, and the Polity III data set that annually gives 161 countries an autocracy and a democracy score according to 9 indicators. The author criticises the Hufbauer, Scott and Elliott study for a too high benchmark for 'success'. Sanctions may have multiple objectives. Hufbauer et al judged success in terms of achieving the most ambitious announced objective. For Bergeijk that makes their study biased in favour of finding failure. A higher success rate might have ensued with respect to minor policy goals. The Hufbauer study is also criticised for having used an inappropriate regression model of ordinary least squares. Applying his own model on the cases reveals that sanctions are likely to be most successful if applied against a country with strong trade links i.e. trade dependency on the outside world and when accompanied by financial sanctions, more specifically restrictions on international capital flows. The effectiveness of sanctions also decreases over time as the target country adapts. Finally there is a statistically significant correlation between the success of sanctions and the degree of democraticness of a country. The message is that empirical findings indicate that sanctions are least likely to be effective against countries upon which they are most often imposed. In pre-assessing the likely impact of sanctions on a target then, not only should economic variables be considered, but also the nature of the political system. ♦

Grunfeld, F. (1997)

### **The Effectiveness of United Nations Economic Sanctions**

26 pp. Paper presented at the conference on UN sanctions in Tilburg, the Netherlands. Email: <f.grunfeld@ir.unimaas.nl>

The author first examines the legal basis on which the UN can impose sanctions. The authority to impose sanctions comes from Article 41 in the UN Charter, but in line with Article 39 prior agreement is required in the Security Council that the behaviour of the potential target can be characterised as a threat to international peace and security. Sanctions therefore are in the first place a punishment for wrongful conduct in the past, before being a coercive measure to effect a change in the behaviour of the target authorities. Demonstrating wrongful conduct is a prerequisite before imposing mandatory sanctions. In this light the sanctions imposed on Sudan for not extraditing the alleged attackers of President Mubarak, are deemed unjustified. The author then refers to a theory of political behaviour, considering various correlations or contrasts between domestic and external pressures on policy makers to inquire into the likely effectiveness of sanctions. Will they choose domestic rewards at international cost or international rewards at domestic cost? The ideal situation is one in which the authority in the target country is subjected to both external and domestic pressure, although the authoritarian leader is likely to ignore both. A distinction is also made between a boycott – a ban on the import of goods from the target states, and an embargo – prohibiting the exporting of goods to the target state. The author holds that a boycott, and financial sanctions, are preferable to an embargo, because they hurt the elite that has most influence over the authorities. An embargo that affects the population at large is held to lead to inconsistency in UN policy, as the UN Charter enshrines social and economic rights for all people. (The author is confused in claiming that the sanctions imposed on Haiti and the former Yugoslavia were a 'success' while simultaneously recognising the threat of force that accompanied them. Although he has plausibly argued that a boycott is more humane than an embargo, he has not adequately supported his second claim i.e. that a boycott will also be more effective). ♦

Noer, J. (1998)

## Maritime Interception Operations. An economic analysis.

47 pp. Alexandria, Center for Naval Analysis.

This paper focuses on the multilateral naval enforcement of sanctions, of which there have been three recent real world experiences: in the context of the sanctions against Haiti, the Former Yugoslavia and Iraq. Due to smuggling such maritime interception operations (MIO) can never halt the foreign trade of a country. Operating under the peace-time rules of engagement, MIOs can never be as effective as naval blockades during wartime. The main impact of an MIO will be to raise the costs of trade by increasing the risk for traders, forcing alternative trade routes and more trans-shipments. The appearance of smuggling therefore is not an indicator of operational failure, rather the contrary. The cost of smuggling is comparable to a tariff-like trade distortion that entails a 'transfer' between the producers of exports and consumers of imports in the target country. Certainly for autocratic regimes, with strong security forces who can control the smuggling and black market activities, smuggling offers profit opportunities that, unlike a tax, do not generate state revenue and therefore are not returned as social expenditure. Embargoes directly reduce the welfare of exporters and consumers in the target state by reducing the volume of trade, and also indirectly, by introducing a cost on the trade transaction that is retained in private hands. MIOs can most easily interdict traffic in bulk commodities in large merchant vessels. Therefore food and fuel is more likely to be affected than high-value/low weight items such as cigarettes, liquor or other luxury items. It is not surprising therefore that luxury items will remain available at a relatively small price increase, while essential commodities will become more scarce and experience a much higher price increase. Embargoing a narrow range of goods is perceived as ineffective. Such goods can simply be smuggled, financed by legal trade and use legal trade as a 'cloak'. The paper explores these arguments through a standard, neoclassical trade model with a smuggling cost function added to it. It also concludes that the profit opportunities that comprehensive trade sanctions offer an autocratic regime, necessitate the revision of the implicit political theory that underlies sanctions policy, i.e. that economic pain will cause the target regime to change its behaviour, directly, or under pressure from its population. Such applications of a free market, democratic paradigm to undemocratic dictatorships with more 'managed' economies, is seen as highly problematic. ♦

Burciul, B. (1998)

## United Nations Sanctions. Policy options for Canada

55 pp. Background paper for the Canadian Department of Foreign Affairs and International Trade.

This an excellent up-to-date, comprehensive, and insightful overview of the debate on sanctions in today's political context. It starts out with the recognition that comprehensive trade sanctions are identified as often being both ineffective and inhumane. Hence the need for reform in the use of sanctions as an international policy instrument. The first section of the paper examines the question of the effectiveness of sanctions in a multilateral context. It reviews the questions and the available evidence from experience in the context of building and maintaining a multilateral coalition, of the specific political, social and economic characteristics of the target country, and of the comparative advantage of sanctions as an instrument to address certain issues. The section looks at the types of sanctions and points out that those that are intended to hurt psychologically, such as travel bans, a ban from international diplomatic fora and a sports- and cultural boycott, have been undervalued. It examines the advantages and disadvantages of a 'hit hard, hit fast' approach, as opposed to a gradual and incremental approach to sanctions, both from the perspective of the target and the imposing coalition. The point is made that a mix of carrots and sticks can be more effective sticks alone. Attention is drawn to the political difficulty of lifting sanctions when the desired change in the behaviour of the target is not forthcoming. A key message that comes out is the importance for policy-makers to understand precisely who their sanctions are intended to influence, and how this influence will work to bring about policy change. The point is made that politicians have become too reluctant to think about force. The notion that the controlled use of force could be quicker, more effective and more humane should not be ignored. The second section examines the question of humanitarian impacts and humanitarian exemptions. It reviews the problems that prolonged sanctions cause and the difficulties with the current unsystematic policies of the ad hoc sanctions committees in organising humanitarian exemptions. Closer interaction between humanitarian aid agencies and policy-makers is recommended, and a reform of the whole policy towards humanitarian exemptions required. There are political obstacles to such reform however. Some of the Permanent Five members are held to be wary of reforms that would enhance the overall credibility and effectiveness of the UN's enforcement procedures. The Security Council has also

found it convenient to avoid the public embarrassment and political friction that might arise if it were forced to acknowledge some of the potential or actual consequences of its policies. Currently the Security Council receives reports prepared by the Office of the Coordinator for Humanitarian Affairs (OCHA), but only at the Security Council's explicit request. OCHA's recent reports are essentially the result of rapid assessment missions. There is a need for a more comprehensive review of ongoing sanctions episodes, where the opinions of a wider array of sources should be solicited. There is also resistance to rationalising the framing and administration of the humanitarian exemptions process, because some Permanent Five members fear that this would rob them of their discretionary power over the specific form of sanctions vis-a-vis a given target. The point is made however that, notwithstanding any increase in the effectiveness of exemptions procedures, the humanitarian effects of economic sanctions are likely to outstrip the capacity of the humanitarian community to provide assistance. The so-called 'collateral damage' to the population and to the close trading partners of the target state, should not be seen as irrelevant to the question of the effectiveness of sanctions. On the contrary, it is precisely these effects that are widely eroding the support for sanctions! From that perspective, a humane sanctions policy would have more legitimacy and support, which would contribute to its effectiveness. However, any serious reform of sanctions policy is politically unlikely until the situation with Iraq is resolved. And the case can best be carried by non-permanent members of the Security Council, who could constitute a 'sanctions forum' along the lines of the Collective Measures Committee, as proposed by

Stremlau. The last section deals with the administration and enforcement of UN sanctions. The need is recognised to enhance national-level capacity, through model sanctions legislation, through better reporting by member states of their efforts to enforce sanctions, and through enforcement assistance missions like the Sanctions Assistance Missions (SAM) in the Balkans. It is recognised however that much depends on the political will of the member states. Political support for sanctions will depend on their being perceived as fair and humane, and on addressing the substantive concerns of close trading partners of the target state for the effects on their economies. The enforcement of sanctions, including typically porous arms embargoes, should be monitored on the ground and violations publicised in the media. There is also a need for more effective coordination and communication. This requires not only the right people talking to each other on the right equipment, but also a clear division of powers and responsibilities at different levels. The complexities of multilaterals' sanctions policies require a capacity for analysis, policy advice and sanctions review, at a strategic level. It seems unlikely that such capacity will be granted to the UN secretariat, given the unwillingness of member states to provide more money into what is often seen as a big bureaucracy, and the political reluctance in the Security Council to call for potentially controversial Secretariat advice in a pro-active fashion. It seems advisable then to develop such capacity for strategic sanctions planning-and-review as a permanent 'sanctions unit' under the auspices of an existing, independent institute for preventive diplomacy. Its holistic, long-term perspective could complement the more temporal analyses undertaken for example by OCHA. ♦

# The United Nations and Sanctions

*Boutros Boutros-Ghali (1995)*

## **Supplement to An Agenda for Peace**

*Position paper of the Secretary-General on the Occasion of the 50th Anniversary of the United Nations A/50/60-S/1, January.*

In this paper the then Secretary-General of the UN proposed a sanctions 'mechanism' in the UN that would have five functions: assessing the potential impact of sanctions on the target country and on third-party countries; monitoring the application of sanctions; measuring the impact of sanctions to enable the Security Council to fine-tune them to minimise unintended suffering; ensuring the delivery of humanitarian assistance to vulnerable groups; and, exploring ways of assisting member states that are suffering and evaluating claims submitted by such states under Article 50 of the UN Charter. ♦

*Stephanides J. (1998)*

## **A Brief Overview of United Nations Applied Sanctions**

*24 pp. An informal background paper prepared by the United Nations Sanctions Secretariat for the Seminar on Targeting United Nations Sanctions, Interlaken, March 1998 (see Interlaken seminar report or email: <stephanides@un.org>).*

This paper provides a succinct overview of the Security Council resolutions imposing sanctions, on a country by country basis, as well as the reviews carried out on behalf of the Security Council for each case. Sanctions remaining in force at the time of writing are those against Iraq, Libya, Somalia, Liberia, Angola, Rwanda, Sudan, Sierra Leone. Case studies summarised under the heading of terminated sanctions are Southern Rhodesia, South Africa, Haiti, and the Former Yugoslavia (this document was written prior to the crisis in Kosovo). Some of the lessons-learned are that economic sanctions might not be effective against autocratic regimes, that there is a need to support states that are requested to enforce sanctions with developing national legislation, and that member states should also report more rigorously on the measures taken to implement the sanctions. It is recommended that sanctions be the object of regular reviews evaluating their effectiveness and their political, socio-economic and humanitarian impacts. The reviews are to be presented to the Security Council. The workings of the (ad hoc) sanctions committees should be rendered more effective, while the UN secretariat needs more specialised expertise and resources to provide the effective support to a policy of sanctions that is expected of it. ♦

Stremlau, J. (1996)

## Sharpening International Sanctions. Towards a stronger role for the United Nations

73pp. Washington D.C., Carnegie Commission on Preventing Deadly Conflict. Website: <<http://www.ccpdc.org/pubs/summary/stremframe.htm>>

Prior to the end of the Cold War the UN imposed sanctions only twice, against Rhodesia and South Africa. In the 1990s however, the UN has been resorting to sanctions with much more frequency. The first section of this study examines the changed international context: growing interdependence between states, a trend towards multilateralism but often with a lack of strong leadership, a shift from states' rights to human rights and a growing concern about 'democracy between states'. There is growing resentment over the domination of the Security Council by the Permanent Five, which is eroding its authority and legitimacy. The second section briefly reviews the sanctions imposed on Iraq, Yugoslavia, Libya, Haiti, Liberia, Somalia, Rwanda and the UNITA faction in Angola. Those against Liberia, Somalia and Rwanda consisted only of arms embargoes. The international pressures put on Nigeria for the abuses by its military regime are also reviewed. The third section touches upon the secondary effects of sanctions on the innocent civilians and on third countries. Better humanitarian exemptions are seen as the answer for the innocent civilians. Compensation for losses incurred by third countries due to sanctions imposed on another state, usually a neighbour, however is much further from being resolved. The Gulf Crisis Financial Coordination Group, organised by the US to fund the military campaign against Iraq, paid some compensation to front-line states, but this was criticised in the region as inadequate and arbitrary. The UN Charter grants member states the right to 'consult' with the Security Council on their grievances, but there is no formal responsibility, nor the financial trust fund, to actually provide compensation. The last and perhaps most important

section of the study deals with enhancing the UN's sanctions capabilities. It should be noted that the UN Secretariat has no control over the politics by which sanctions are imposed – this is the prerogative of the Security Council, nor about the enforcement of sanctions, which is the responsibility of member states. The UN Secretariat however could play a role in improving the environment in which governments debate and decide on these collective measures. The current system of ad hoc committees, staffed by changing diplomats without the necessary specialist knowledge and susceptible to political influence, is not satisfactory. Notwithstanding the cost implications, the author believes that an improved capability within the UN is necessary. Its functions would involve the detailed analysis of the political dynamics and the economic structure of the target country, its strengths and vulnerabilities. It could provide technical assistance to member states to put in place the necessary national legislation and structures to implement mandatory UN sanctions. It would also monitor member states' efforts and compliance through a regular and uniform reporting format. The author recalls the Collective Measures Committee of 14 nations, that assessed ways of improving sanctions regimes in two reports, one in 1951 and a second in 1952. He suggests that a second Collective Measures Committee be created and mandated by the General Assembly, as a means of building political consensus to strengthen the UN sanctions' infrastructure and its ability to work with member states who have to implement and enforce Security Council resolutions. It could also focus wider international attention on the range of financial sanctions and foster more international cooperation in imposing these, rather than commodity sanctions. Admittedly financial sanctions require technological capabilities and legal and administrative structures that so far only the USA has at hand. For its own credibility, a new Collective Measures Committee should not be dominated by the Permanent Five. Smaller democracies with a strong pro-UN stance, such as Australia, Canada, the Netherlands, Norway and Sweden, among others, are better placed to build broad political support. ♦

*Alting von Geusau, F (1997)*

### **Recent and Problematic: The imposition of economic sanctions by the Security Council**

*9pp. A brief discussion paper. Presented at the conference on the Effectiveness and Effects of UN Sanctions, in Tilburg 1997.*

The author questions the comparative ease with which the Security Council of the United Nations has been willing, since 1990, to impose sanctions. Article 16 of the Covenant of the League of Nations only permitted the imposition of sanctions after a state had resorted to war in disregard of its covenants under articles 12, 13 or 15. This comparative ease comes from the broader mandate of the UN Security Council that can move to Chapter VII action of enforcement when it decides there is a 'threat to peace, breach of the peace, or act of aggression'. The author argues that the current objectives of sanctions go well beyond the maintenance or restoration of international peace and security. Maintaining or restoring respect for international law is strictly speaking not a legitimate justification for sanctions. Indeed the Security Council is a political body that can enforce peace – it is not a judicial body to determine a breach of international law and restore respect for it. Imposing sanctions to force states to hand over suspected terrorists, to restore democratic rule in a country or to overthrow a regime are additional but imprecise objectives which are a questionable basis for the imposition of sanctions. This broadening of objectives then opens the door for selective application and interpretation. This is all the more problematic given that sanctions are not a very suitable instrument to promote respect for international law. ♦

*no author (1998)*

### **Administering Financial Sanctions: problems and solutions**

*Non-paper by The Netherlands. 4 pp. Presented at the Expert Seminar on Targeting Financial Sanctions, Switzerland, Interlaken.*

Effective sanctions require that UN Security Council resolutions imposing them come in uniform, clear and unambiguous language. Unclearly phrased resolutions give rise to problems of interpretation and to divergent attitudes between enforcing countries, probably creating loopholes to evade sanctions. Clear language is also required to translate Security Council resolutions into legally enforceable national sanctions regimes. Since 1993, Security Council resolutions are implemented in the European Union on the basis of regulations adopted by the EU Council, which requires that the European Community adopts a single interpretation of the wording of the Security Council resolution. Two mechanisms to enhance the clarity of Security Council resolutions are proposed: the use of a minimum of same wording, terminology, common definitions or a common set of terms in UN sanctions resolutions, possibly the development of standard building blocks of texts to be used in all UN sanctions resolutions; and the provision of guidelines or explanatory memoranda by the UN specifying the operational application of a resolution. Such vertical information exchange from the UN authorities to member states would also help the latter in adequately informing their financial sector through which the sanctions may be applied. At the same time there is a need to strengthen the information exchange and coordination between sanction enforcing member states, to ensure a consistent approach across the national boundaries e.g. with regard to humanitarian exemptions. National legal obligations imposing secrecy on certain administrative acts may be an obstacle to such exchange of information. Finally it is suggested that there be more consistency between economic and financial sanctions, for instance no economic sanctions without sanctions on the trade related financial transaction, and no financial sanctions that inhibit trade if there are no economic sanctions. ♦

*Doxey, M. (1997)*

## **United Nations Sanctions: current policy issues**

*46 pp. Halifax, Dalhousie University, Centre for Foreign Policy Studies. Email: <centre@is.dal.ca>*

A very readable and succinct summary of the key current issues with regard to UN sanctions: burden-sharing with affected neighbours and trading partners of the target state, humanitarian concerns, targeted measures and the administration and enforcement of UN sanctions. For each issue, reference is made to key reports and case examples. Article 50 of the UN Charter entitles Member States confronted with 'special economic problems' the right to consult the Security Council. Although Article 49 of the Charter contains the pledge of mutual assistance in sanctioning, there is no definition of 'special economic problems', no guarantee of redress, no developed methodology to assess and verify the economic costs that sanctions cause on the trading partners of the target state, and no machinery to handle complaints. As a consequence the country specific ad hoc sanctions Committees have served as postal station for complaints and requests, and as launch pad for appeals through the Security Council. It is suggested that the international financial institutions, UNDP and regional bodies have expertise that could be brought to bear in this matter. With regard to humanitarian impacts, there is growing concern that sanctions wipe out development gains of an economy and lead to the criminalisation of society. There remain conceptual and practical problems with the provision of adequate humanitarian assistance to protect the most vulnerable sections of the population. Improvements are needed in the determination of impact and need, the handling of exemptions and the monitoring

of the equitable distribution of the humanitarian supplies. Targeted measures can include restrictions on personal travel, the exclusion from international fora, cultural- and sports-boycotts, the restriction of air links, and the freezing of assets. Diplomatic sanctions have the drawback that they force the target leadership into isolation, which limits the scope for critical engagement. The effective use of freezing of assets in practice is difficult and not all countries are as enthusiastic about it as the USA. All in all it appears that targeted sanctions cannot provide an effective alternative to comprehensive sanctions, but are a complement to them. The problems with the administration and enforcement of UN sanctions are threefold: Security Council resolutions have to set clear goals and be specific; national governments have varying legislative and executive competence for implementing mandatory UN sanctions. A survey of member state capacities has been proposed but not yet implemented. Some help could be provided in the form of guidelines. In the case of the Balkans, the Sanctions Assistance Missions and their communication centre in DG21 in Brussels were an example of tangible enforcement support, through experts and equipment, to the states bordering Serbia-Montenegro. There is also a need for clearer mandates and greater transparency and consistency of the ad hoc sanctions committees. An institutionalised sanctions unit in the UN Secretariat seems however not politically realistic. Among the Permanent Five, China and Russia oppose the sweeping use of sanctions by the Security Council, particularly for purpose that they consider within domestic jurisdiction. The USA, usually backed by the UK, opposes initiatives which transfer control to the UN Secretariat. The unsatisfactory sanctions policy of the UN ultimately depends on the member states and their willingness to provide the UN with the means and the authority to improve. ♦

Boudreau, D. (1997) on

## Creating a United Nations Sanctions Agency

in *International Peacekeeping* 4(2)115-137.

The author critically examines the reasons for and reservations against the establishment of a UN sanctions agency. The arguments against such dedicated institution are that it implies that sanctions will continue to be used, notwithstanding their questionable effectiveness and costs to the sender countries and close trading partners of the target country. Moreover such an institution would need a financial basis, which is hard to obtain when the overall mood is for UN reform and downsizing. The fact remains however that Chapter VII of the UN defines three basic instruments to safeguard peace: diplomacy, force and sanctions. There has been an increased imposition of UN sanctions in the 1990s and the current arrangement with ad hoc sanctions committees, made up of representatives from the member states on the Security Council, is not satisfactory. They do not provide institutional learning on sanctions, nor consistency in sanctions applications. They tend to take a minimalist approach to what can be considered exempted on humanitarian grounds, and are very slow in clearing exempted goods. In theory they are supposed to monitor the implementation of sanctions and to assess their effectiveness, but in practice they do this in a passive and non-systematic way. Notwithstanding the political and financial reservations then, the author holds that there is strong case to be made for an institutionalised UN Sanctions Agency. ♦

Pirkko, K. (1997)

## International Protection of Refugees and Sanctions: Humanizing the blunt instrument.

in *International Journal of Refugee Law* 9(2)255-265.

The author makes an argument for a closer nexus between the use of sanctions in the pursuit of international peace, and the right of refugees to international protection. Reference is made, in this context, to a proposal to the Security Council from the Russian Federation to introduce 'humanitarian limits' into the design of sanctions. Indeed, refugees in a sanction-affected region tend to become the lowest priority for the targeted government. At the same time sanctions hamper the access and assistance of e.g. UNHCR on behalf of refugees. Thus, in August 1995, the authorities of Serbia-Montenegro claimed that the sanctions imposed against them made it difficult for them to look after the 500,000 who had already taken refuge on their territory, especially while another 250,000 ethnic Serbs were being expelled from the Krajina in Croatia. Although eventually a blanket exemption was granted to UNPROFOR, the author does not believe there will be enough political will for automatic exemptions for humanitarian agencies. Hence the second-best option appears streamlining the procedures for the granting of exemptions. Reference is made to the experience of UNHCR in the Former Yugoslavia. Having established a working dialogue with the Yugoslav Sanctions Committee, the latter by 1993 abandoned the case-by-case processing of requests and for UNHCR replaced it with a three tier system. UNHCR, also on behalf of its implementing partners, then submitted three types of six-monthly requests to the Sanctions Committee: one for programming and programme administration needs, one for cash transfers and one for fuel requirements. This system reduced the workload of the Sanctions Committee and also encouraged better planning and coordination among the operational agencies. The lifting of sanctions can also have implications for refugee protection. Thus, Zaire in the summer of 1995, opposed the Security Council's move to lift the arms embargo against Rwanda. Zaire claimed that the Rwandan refugees on its territory constituted a security threat to Zaire. In Zaire's view, Rwanda was not keen on the repatriation of the refugees and new arms to Rwanda could generate more refugees. A few days after the Security Council lifted the arms embargo, Zaire forcibly repatriated some Rwandan refugees. ♦



# Arms Embargoes

Bondi L. (1998)

## Arms Embargoes

*14 pp. Paper presented at the symposium on targeted sanctions 7 December 1998, New York. New York, Human Rights Watch, Arms Division.*

Since 1990 the Security Council has declared ten mandatory arms embargoes. Their non-enforcement contributes to the steady erosion of the credibility and effectiveness of international measures to halt violations of human rights and international humanitarian law. Their flawed design also fosters an illicit trade in arms. The ineffectiveness of arms embargoes comes from the inability or unwillingness of member states to actively implement and enforce them. Member states may lack the resources and sufficiently tight legislation to enforce arms embargoes and prosecute violators. Major international powers, including members of the Permanent Five, themselves, through ad hoc encouragement, tolerance or professed ignorance of embargo violations, make a mockery of the collective will to stop unchecked arms proliferation. Recent examples include the documented sale of arms by France, in 1994, to Rwanda's ex-government forces that had fled to eastern Zaire, the 'tolerance' by the USA, in 1994-1995 of the arms shipments from Iran to Bosnia and of the business contract between Military Professional Resources Inc. to provide military services to the Croat and the Bosnian armies, and the arms shipments, in 1997,

by the UK-based company Sandline International, to the forces of ECOMOG and of the ousted Sierra Leonean president Kabbah. The ineffectiveness of arms embargoes is further also due to institutional weaknesses in the UN. The vague wording of Security Council resolutions, without further guidelines, are one of these. Another is the ad hoc nature of the sanctions committees, who do not dispose of a centralised data collection site, and whose diplomatic staff rotates and does not necessarily have the specific expertise in law, economics and intelligence analysis. The sanctions committees are also passive in their monitoring of alleged embargo violations. They do not actively pursue information on violations and do not currently consider such information from non-governmental sources. The recommendation of the Secretary General of the UN to include a substantive section on the implementation of arms embargoes in the annual reports from the sanctions committees should be headed. The practice of the recently revived International Commission of Inquiry (Rwanda), set up to investigate violations of the arms embargo on Rwandan rebels, in complement to the passive Rwanda Sanctions Committee, should also serve as a model. The current international momentum to check the uncontrolled proliferation of arms, especially light weapons, should lead to further improvements in practical enforcement. The report concludes with a series of recommendations to the UN Security Council, to regional organisations and to individual governments. ♦

# The Office of the Coordinator for Humanitarian Affairs (OCHA) and Sanctions

*OCHA Briefing Note (1998)*

## **Assessing the Humanitarian Impact of Sanctions. Toward smarter and better managed sanctions regime.**

*7 pp. New York, OCHA.*

The note provides a short review of the line of work undertaken by OCHA in order to provide information, analysis and expertise so that sanctions can be designed to maximise the political impact while avoiding negative humanitarian impact and facilitating the provision of humanitarian assistance to the most vulnerable groups. Work is being done on developing the methodology to pre-assess the potential impact of sanctions and to monitor that impact once they have been imposed. To this end, indicators have already been identified for the key sectors of food supply, nutritional status among vulnerable groups, basic health care provision and population displacements. The methodology is being further developed by a technical group of experts, established in late 1997 and working under the auspices of the Inter-Agency Standing Committee. Recent practical experience has consisted of the assessment missions to Burundi, Sudan and Sierra Leone. The analysis of the humanitarian situation may indicate a need for corrective measures in the sanctions policy. Humanitarian exemptions are seen as the major tool of correction. Guidelines for humanitarian exemptions need to be developed. The three options on the table are institution-specific exemptions, item-specific exemptions and country-specific exemptions. ♦

*OCHA (1998)*

## **Coping with the Humanitarian Impact of Sanctions. An OCHA perspective.**

*15 pp. New York, OCHA, Policy, Analysis and Information Division.*

There is growing agreement that comprehensive sanctions are a blunt instrument with undesirable humanitarian consequences for the population in the

target country. Adequately managing these humanitarian impacts is now recognised to be a central aspect of the efficient management, and therefore of the success, of sanctions. Although for UN peace-keeping and peace-enforcement operations extensive institutional arrangements exist, that is not the case for sanctions management. The Sanctions Committees remain 'ad hoc', and the sanctions policy of the Security Council tends to be more influenced by political contingencies such as timing and coalition management, than by principles and technical-operational considerations of the measure. There is a need for a more principled approach to sanctions policy, with humanitarian and human rights principles serving as standards for the design and evaluation of sanctions regimes. The experience shows that the insistence on principles is even more urgent in the case of prolonged sanctions regimes and sanctions imposed by regional groupings of states. There is also a need for a strengthened and more integrated management of sanctions regimes. Pre-assessments and ongoing monitoring of the humanitarian impact of sanctions should be a mandatory part of Security Council and sanctions committees practice. The assessments of humanitarian impacts should lead to adjustments to the sanctions policy through swift and effective exemptions. The emphasis here should be on the net result of the exemption process, i.e. the delivery of adequate humanitarian assistance, rather than on the processing of requests for exemptions. Finally, further work should be encouraged to develop targeted and diversified models of sanctions. Where financial assets are frozen or seized, consideration can be given to using them to fund humanitarian assistance to the civilian population in the target state. OCHA in all this sees itself as an intermediary between humanitarian agencies and sanctions authorities. Its roles include developing a methodology for the rapid assessment and ongoing monitoring of humanitarian impacts of sanctions, the coordination of assessment missions, the fostering of new approaches to sanctions regimes, in particular targeted sanctions, the elaboration of efficient exemption processes, the provision of technical assistance to regional groupings of sanction senders or individual sender states, as well as advocacy towards the Security Council. ♦

# Sanctions and Social and Economic Rights

*Committee on Economic, Social and Cultural Rights (1997)*

## **The relationship between economic sanctions and respect for economic, social and cultural rights**

4pp. *General Comment No. 8. Website: <<http://www.unhcr.ch/tbs/doc.nsf>>*

The Committee justifies its commenting on sanctions on the basis of its responsibility to monitor compliance by all States party to the Covenant on Economic, Social and Cultural Rights. It points out that a variety of studies indicate that humanitarian exemptions, unlike commonly assumed, in practice do not ensure basic respect for economic, social and cultural rights within a country subjected to sanctions. It also points out that a state, subjected to sanctions still has an obligation to provide the greatest possible protection for the economic, social and cultural rights of each individual living within its jurisdiction, and to ensure the absence of discrimination in the enjoyment of these rights. The external entity imposing sanctions, is also beholden to taking these rights into account in the design of the sanctions. Far greater flexibility and efficiency is required in the exemption procedures. While sanctions are in force, effective monitoring should be undertaken and every effort should be made to respond to any disproportionate suffering experienced by vulnerable groups. Although two Permanent Members of the Security Council, China and the USA, have signed the covenant but not yet ratified it, the same principled respect for the economic, social and cultural rights is part of general international law, and is present for example in the Universal Declaration of Human Rights and the Convention on the Rights of the Child. ♦

*Centre for Economic and Social Rights (1996)*

## **Unsanctioned Suffering. A human rights assessment of United Nations sanctions on Iraq**

43 pp. *New York. Email: <[cesr@igc.apc.org](mailto:cesr@igc.apc.org)> or <[cesr@netcom.com](mailto:cesr@netcom.com)>. Fax: (+1) 212 982 2136.*

The Centre for Economic and Social Rights was formerly known as the Harvard Study Team. This report results from a mission to Iraq in early 1996 by a team of doctors, public health specialists, economists, and lawyers. The objective of the mission was to assess the impact of the sanctions on the civilian population, and to assess the legality of the Security Council sanctions against Iraq. The report first reviews the findings of earlier studies and then presents its own main findings, notably resulting from an economics and a health survey. The economic survey included households, markets and a variety of economic enterprises. Sanctions have caused serious foreign exchange shortages and rising inflation. The survey identifies people dependent on the government as particular vulnerable groups, examples being civil servants and pensioners. It also confirms the importance and the quality of the public food ration system. A conclusion is that the \$4 billion per year oil-for-aid agreement, according to UN estimates, is less than half of the food and medicine import needs of Iraq. This does not take into account the required maintenance of and investment in public utilities and health infrastructure. The health survey highlights not only shortages in pharmaceuticals and medical equipment, but also e.g. of oxygen and even paper for administrative purposes. Unrecognised but of vital importance is the deterioration of the health infrastructure, notably water and sewage systems, which seriously contributes to the public health crisis. The sanctions mean that there are no spare parts nor chemical agents. The highly qualified Iraqi medical personnel is not trained to work under such poor conditions, and this has a negative impact on the quality of diagnoses and of treatment. The report holds that the Security Council has failed to observe procedural and substantive duties. Procedurally, the Security Council should acknowledge its own responsibility to abide by the values and standards of the UN Charter. It therefore should account for the impact of its activities on human rights. Substantively, sanctions indicate a state of neither peace nor war. They

therefore fall somewhere between human rights law and international humanitarian law, two sets of legal instruments which, although based on similar principles, provide different levels of protection to individuals. The sanctions against Iraq violate the rules of distinction and proportionality of international humanitarian law. They also violate at least the rights of children in Iraq. The report refutes the argument of the Security Council that the responsibility lies solely with the regime in Baghdad, that fails to comply with Security Council resolutions, and spends scarce resources on palaces for Saddam Hussein. Irrespective of the responsibility of the Iraqi regime, the sanctions contribute to the denial of human rights of the Iraqi people, and the Security Council has not seriously considered less drastic actions nor a stronger mitigation of their impact on the civilian population. The report concludes with some policy recommendations. The ad hoc sanctions committee should modify its judgment about dual-use items such as chlorine. The sanctions regime should state more clearly its objectives so that it becomes possible to judge more precisely the degree of compliance. More targeted sanctions, such as an arms embargo and diplomatic sanctions, are recommended. And a legal framework should be drafted that sets out the limits on Security Council actions in its pursuit of international peace and security. Finally, an independent mechanism should be established to monitor the actual implementation of sanctions regimes. ♦

*Normand, R. (1997)*

### **A Human Rights Assessment of Sanctions: The case of Iraq 1990–1997**

*20 pp. Paper presented at the conference on the Effectiveness and Effects of UN Sanctions, in Tilburg, 1997*

The author questions the lack of accountability of the Security Council in its use of sanctions. Seven years of sanctions against Iraq have caused substantial excess mortality, particularly of children. This is a violation of human rights, particularly of the rights of the child. The oil-for-aid deal of 1996 is only a palliative that does not address the issue. The amount of \$1 billion from oil sales that the Iraqi government can spend on humanitarian supplies, plus the amount that the UN uses to provide aid to the Kurdish region of northern Iraq, are inadequate. It falls well short of the \$3.2 billion that Iraq would probably be spending on imports for food, health care and water purification (based on adjusted 1987 prices), and of the \$2.2 billion estimated requirements from UN aid agency estimates in 1996. Why restrict oil sales to an amount that falls well short of meeting humanitarian needs? Surely the monitoring mechanisms on the ground could have handled a larger value of imports? Problematically, the oil-for-aid programme has served to delay a long-overdue reappraisal of the sanctions against Iraq. The impact of the sanctions on Iraqi civilians is a violation of their basic human rights. The author points out that the Security Council, according to Article 23 of the UN Charter, in using its enforcement power, still should act in accordance with human rights and humanitarian principles. The Security Council has no unlimited license to impose sanctions or use force, certainly not when, as is the case in Iraq, the Iraqi people are punished collectively for the recalcitrance of their leader. The argument that the Iraqi regime is solely responsible because, between 1991 and 1996, it rejected an oil-for-aid deal, is refuted. Human rights are owed directly to individuals, and the denial of these rights by the Iraqi regime does not justify a further denial by the Security Council. Sanctions may be used as an alternative to force, but surely they too should respect basic 'laws of war' i.e. the distinction between military and civilian targets and proportionality if 'collateral damage' is inflicted on civilians. The failure of the Security Council to provide guidelines for sanctions, and the lack of systematic monitoring of their impact, are not acceptable. Currently the Security Council itself judges the legality of its own actions, and is accountable to no one. Is there not a role here for the World Court? ♦

Gibbons, E. (1998)

## Violating Human Rights in Haiti. An anatomy of sanctions

170 pp. To be published as *'Sanctions in Haiti. Human rights and democracy under assault. Westport, Centre for Strategic and International Studies/Praeger Press, in early 1999.*

The 1993 World Conference in Vienna confirmed that civil and political, social, economic and cultural human rights are universal, indivisible and interdependent. This detailed study of the impact of the comprehensive trade sanctions against Haiti raises the question whether social and economic rights can be violated by sanctions in an attempt to restore democracy and promote civil and economic rights? More specifically, are the United Nations entitled to violate social and economic rights by imposing such sanctions? The Haiti case is particularly interesting because it set an unintentional precedent for the use of sanctions to restore democratic rule (subsequently repeated against Burundi in 1996 and Sierra Leone in 1997), because there was substantial support from the Haitian population and democratic opposition, because generous humanitarian assistance was provided to offset the impact of sanctions on vulnerable groups, and because in the end democracy was restored by the threat of force rather than by sanctions. This study by the UNICEF representative to Haiti between 1991-1994 is particularly innovative because it also brings the voice of many Haitians who were interviewed in the course of the research. The comprehensive trade sanctions caused significant additional social and economic dislocation. Price increases and the loss of jobs in the formal sector were among the more visible consequences. Families' coping strategies included the sale of assets, reduction of household expenditure including on food and school fees, informal sector employment which also included children dropping out of school, a rise in begging, crime and prostitution and involvement in smuggling activities, and sometimes family break up and child abandonment. The sanctions also caused an increase in the cost of medical care, a deterioration of public health services and access to them, and a deterioration of water supply and water purification systems. The generously funded humanitarian assistance itself caused many problems. Whereas the international community believed it would provide an adequate safety net, the Haitian opposition -in-exile saw it as sanctions-busting while the coup-supporters perceived it as a palliative for the guilty consciousness of those imposing sanctions. UN agencies in particular were caught in profound dilemmas because of their obligation to comply with Security Council

resolutions stressing norm enforcement, and the need to provide humanitarian assistance in a neutral and impartial way and sometimes in accordance with additional mandates such as the Rights of the Child. Their headquarters offered no policy or operational guidelines for working in a sanctions affected country. The Haiti Sanctions Committee issued guidelines for exemption procedures that were not practical. More problematically even was the definition of 'humanitarian' which eg. excluded contraceptives and cold chain equipment while including vaccines. It is alleged that the breakdown in the cold chain and thereby in the immunisation programme led to an increased mortality rate from the measles epidemic in 1991-93. Human rights organisations reported on the impact of repression but generally ignored the impact of the sanctions. A study on the humanitarian impacts of sanctions, carried out by the Harvard University School of Public Health caused significant political controversy. This publication is furthermore innovative, in that it considers the impact of sanctions on democracy in Haiti. Ostensibly imposed to restore democratic rule, the author argues that in many ways the sanctions set-back the process of democratisation in Haiti. The return to democracy was too simply equated with the return of one person, the ousted President. On the one hand, the sanctions reinforced the autocratic regime whose security forces took control of the smuggling and the black market, and the allocation of scarce resources. For the general population, forced into coping with the severe dislocations by the sanctions, political mobilisation then only became more difficult. At a more structural level the sanctions withdrew aid to the educational sector as being 'developmental' and thereby contributed to drop out of children from school. It also withheld development aid to the decentralised institutions and to Parliament, although ousted President Aristide's party retained a significant number of seats there. Humanitarian agencies were forbidden to work through public institutions, including decentralised ones, several of which had elected and responsive authorities. The result was a boom in the NGO sector while the public sector atrophied and lost all credibility. Hence the sanctions reduced access to education, eliminated the middle class and weakened national institutions, all considered prerequisites for democratisation. They also drew a wedge between the opposition-in-exile, which could influence the decisions on sanctions, and the opposition-in-country, which was not consulted. Not surprisingly, three years after the sanctions were lifted and notwithstanding a generous Emergency Economic Recovery Programme, Haiti has not recovered from the sanctions. Health- and social impacts such as the effects of malnutrition, drop out from school, prostitution and broken up families are

not easily reversed. The new Constitutional government also found itself with a debilitated state machinery with no absorption capacity or popular credibility, and with a lack of political consensus. In retrospect, many Haitians who had supported sanctions, came to regret their innocence about the impact of comprehensive trade

sanctions and the availability of political, cultural and financial sanctions. In conclusion then, sanctions may be needed, but not sanctions that strengthen the targeted regime, that mortgage the country's assets for democracy and whose design fails to respect humanitarian and human rights law. ♦

# Monitoring the Humanitarian Impact of Sanctions

Weiss, Th., D. Cortright, G. Lopez & L. Minear (1997)

## **Political Gain and Economic Pain. Humanitarian impacts of economic sanctions**

273 pp. Lanham, Rowman and Littlefield.

Sanctions have been popular because they were perceived as a low cost, low risk alternative to war, and as a way of coercing political changes that were less damaging to life, livelihoods and the economy than war. Comprehensive trade sanctions are intended to effect political change in the target leadership through inflicting civilian pain. The underlying assumption then is that economically pressured citizens will put pressure on their leadership to change its policies, or remove it from office. This book is an excellent synthesis of the political and humanitarian issues, based on a review of the available scholarship and case studies of South Africa, Haiti, Iraq and Former Yugoslavia. It eloquently reviews the arguments and observations regarding UN sanctions as political tool. There is the problem that the Security Council has the mandate not only to protect international peace and security but also human rights. There is the problem of the lack of capacity, consistency and transparency in administering sanctions, and in monitoring their impact. Sanctions are usually imposed for multiple objectives – does their ‘success’ or ‘effectiveness’ only depend on them achieving their primary goal? Are political outcomes the only criterion

by which to judge sanctions, or are humanitarian and development impacts other considerations to take into account? Are sanctions supposed to be an alternative, or a prelude to force? Can the imposition of sanctions be an impediment to the prompt use of force? Multilateral sanctions require coalition building, and maintaining the coalition can become a primary consideration in maintaining sanctions. Given the momentum of policies in place, and the institutional stakes for those promoting them, mid-term corrections may be difficult. Besides target countries also develop resistance and undertake evasive actions. Although politicians prefer flexibility, the case is made for a more principled, consistent, effective and accountable sanctions ‘regime’. Sanctions pose huge challenges to humanitarian agencies, not only to their information management and logistics capacities, but also to their identity, mission and impartiality. There remains lack of clarity about the boundaries of ‘humanitarian assistance’ and about the humanitarian ‘bottom-line’ for civilian pain. The book contains a chapter that reviews previous methodological work on baselines, indicators, causation and counterfactual argument and offers some tentative steps towards a methodological framework for assessing the impact of sanctions in four domains: the economic, the socio-demographic, health/medical and the socio-humanitarian. The question however remains what are manageable tensions and when emerge fundamental contradictions between sanctions and humanitarian concerns? ♦

Minear, L., D. Cortright, J. Wagler, G. Lopez and Th. Weiss (1998)

### **Toward more Humane and Effective Sanctions Management. Enhancing the capacity of the United Nations System.**

90 pp. Providence, Brown Univ., Thomas Watson Jr. Institute for International Studies, Occasional Paper no. 31. Email <IIS@brown.edu> Website: <[http://www.brown.edu/Departments/Watson\\_Institute/](http://www.brown.edu/Departments/Watson_Institute/)>

This is the published version of a report commissioned by the Dpt. for Humanitarian Affairs (now OCHA) on behalf of the UN Interagency Standing Committee. The introductory chapter reviews the current context of sanctions, and summarises much of the Weiss et. al. book 'Political Gain and Civilian Pain'. The main report however is devoted to the question of methodology for assessing the humanitarian impact of sanctions and the capacity of the UN to monitor and ameliorate adverse humanitarian consequences. Working in a sanctions affected country poses additional challenges for humanitarian agencies: they may have to take on more of the burden of meeting needs, they need to liaise with the sanctions committee that grants humanitarian exemptions, and with the enforcing authorities, and they will be expected to take on a larger role in the monitoring of the impact of sanctions. There is a strong argument for agencies in such situation to collaborate more closely in strategising and programming. It is unlikely however that humanitarian agencies can mobilise the capacity to meet all basic needs. Two major methodological problems in

monitoring the impact of sanctions are the gathering of data, especially at the level of the community and the household, and disaggregating the effects of sanctions from other causes of social hardship such as war and repression. Moreover, impact monitoring needs to be done over time: a vulnerability assessment prior to the impact of sanctions is recommended, but then change indicators needs to be identified and compared with baseline data. The study details a monitoring framework with indicators that focuses on five domains (economics, public health, population displacements, governance and civil society, humanitarian operations). In doing so, reference is made to work in progress by Richard Garfield and Eric Hoskins. The last section deals with humanitarian exemptions and advocates for the development of a more consistent and transparent 'sanctions regime'. The current practice of Ad Hoc Sanctions Committees is itself ad hoc. There is no consistency in their policies and procedures, no institutional memory and no transparency about their decision making. Particular attention is required where sanctions are imposed by regional groupings of countries, such as those against Sierra Leone or Burundi, where there is no experience with humanitarian exemptions. The point is made that there is also undue concern about granting humanitarian exemptions: sanctions enforcement is threatened primarily by political and commercial non-compliance, not by humanitarian exemptions. Three options are proposed to simplify and expedite the approval of exemptions, each with their advantages and disadvantages and specific review procedures: item-specific exemptions, institution-specific exemptions and country-specific exemptions. ♦



Hoskins, E. (1998)

## **The Impact of Sanctions. A study of UNICEF's perspective**

36 pp. New York, UNICEF, Office of Emergency Programmes.

This study contributes to the development of a methodological framework for assessing and monitoring the impact of sanctions, based on a human rights framework. Sanctions should be designed and implemented with respect for basic human values as expressed in the two International Covenants on Human Rights and the Convention on the Rights of the Child. The study identifies 13 universally accepted human rights and sets relevant humanitarian indicators against them. Merging this with a table of the observed humanitarian effects of sanctions yields a framework of twelve sectors of assessment, each with sanctions-sensitive indicators and means of assessment. A reduced and therefore more manageable list of selected indicators is also presented, that are best-suited to survey measurement and useful for trend analysis. This more traditional assessment methodology is then enriched with systematic context analysis of the variables which could explain and/or influence the impact of sanctions. Indeed, both indicators and context analysis are needed to (pre-) assess the various contributing factors that can shape the impact of sanctions. The third methodological tool is trend analysis to monitor

the impact of sanctions, and the varying weight of different contributing factors, over time. The author proposes a principled approach to sanctions, whereby no sanctions would be imposed without a pre-assessment of their likely humanitarian impacts, and in particular a child impact assessment. Ideally only partial sanctions should be imposed. Where comprehensive trade sanctions are imposed, there should be a concomitant humanitarian commitment of the international community to mitigate their effect. The administration of humanitarian exemptions to sanctions therefore should be streamlined. The impact of sanctions should be monitored on an ongoing basis. The UN may wish to consider the deployment of 'humanitarian monitors' similar to the UN human rights monitors. More work on impact monitoring methodologies is required, possibly within the framework of the Interagency Standing Committee. OCHA is suggested as a possible administrative and coordinating focal point for sanctions assessment and monitoring, and for the reporting of humanitarian impacts to the Security Council and Sanctions Committees. NGOs, academics and other interested parties however should be encouraged to participate in the monitoring of impact and the reporting on sanctions effects. Affected communities should also be given more voice in the sanctions debate and in the sanctions review process. Finally, it is recommended that existing humanitarian law be clarified with regard to its application to sanctions.◆

# Pre- and Post-Sanctions Impact Assessments

*Hoskins, E. & Nutt, S. (1997)*

## **The Humanitarian Impacts of Economic Sanctions on Burundi**

*113 pp. Providence, The Thomas J. Watson Jr. Institute for International Studies at Brown University Website: <[http://www.brown.edu/departments/Watson\\_Institute/](http://www.brown.edu/departments/Watson_Institute/)>*

A total economic blockade was imposed on Burundi by its neighbours following the coup by Buyoya in the summer of 1996, that effectively interrupted the Arusha Peace Process. Although the UN Special Rapporteur on Human Rights in Burundi had advocated sanctions days prior to the coup, if the commitments made at the Arusha summit would not be honoured, the sanctions were subsequently recognised, but not mandated or enforced by the international community. The report is based on field work carried out in early 1997. It recognises the methodological difficulties in differentiating the impact of sanctions from the impact of the civil conflict. The first section examines the socio-economic impacts of the sanctions. It shows that the sanctions aggravated the deterioration and insecurity resulting from the prolonged civil conflict. Although imports and exports continued, they were now largely illegal. Together with the suspension of official development assistance this deprived the government of revenue, while also creating inflation and a higher cost of living. Overall food

insecurity grew, mostly so for industrial workers who got laid off, and for the refugees and internally displaced. Medical services for animal and human health deteriorated without the aid agencies being able to adequately replace government and private sector efforts. The second section examines the impact of sanctions on the aid agencies. Whereas initially the sanctions were imposed without any humanitarian exemptions, such were gradually introduced by the Regional Sanctions Committee. Overall however the aid agencies were slow to adapt and divided in their position on the sanctions. Admittedly the Regional Sanctions Committee did not have transparent policies and procedures, and national sanctions authorities did not necessarily quickly recognise the exemptions granted. Humanitarian aid shipments therefore could remain blocked for months. The situation however was aggravated by the lack of institutional memory and of a clear sanctions policy in the UN, that would have enabled a more decisive engagement with the Regional Sanctions Committee. The operational aid agencies themselves were not prepared for working under sanctions. They subsequently focused mostly on service delivery, neglecting impact monitoring and advocacy. The third section looks at the effectiveness of the sanctions in achieving their political goal ie. a return to constitutional rule. Little progress is noticeable by April 1997. Indeed, Buyoya has used the sanctions to appeal to Burundian nationalism and as scapegoat for the country's problems. ♦

Salter, G. (1997)

### Sanctions in Burundi

30 pp. available from the Policy Dpt. of ActionAid, Hamlyn House, Macdonald Road, Archway, London, UK, N19 5PG. Fax (+44)171 282 2076.

An independent study by a staff member of the Economist Intelligence Unit, commissioned by ActionAid, a British NGO. Salter's study, conducted at the same time as that of Hoskins and Nutt (February 1997) confirms their findings. After half a year of sanctions, sanctions-busting has led to a stabilisation and even a slow decrease again of the price of most goods including fuel. The devaluation of the Burundi currency because of the embargo will however negatively affect people's purchasing power. Although exports of coffee, the key foreign currency earner for Burundi, are prohibited, they have resumed. Restrictions on imports and exports are estimated to have halved the government's revenue. Yet the government is maintaining defence expenditure at about 35% of the budget, so that the cuts are disproportionately born by social expenditure. Continued sanctions are also expected to lead to a further deterioration of the balance of payments and arrears in multilateral debt servicing. The sanctions are further aggravating agricultural production, already affected by war, displacement and poor rains. Domestic medicine manufacture has reduced but private pharmacies can access supplies from Europe, directly or via Rwanda. The cost of medicines however has greatly increased. Governmental health services have been affected, leading to a concentration of health resources in the capital, and forcing international agencies to take on a greater role in the provision of health services. Industrial production has been strongly affected with rising employment especially for small businesses. Salter's assessment that the sanctions have brought no progress on the political front echoes that of Hoskins and Nutt. Regional heads of state give the impression of being stuck with sanctions unwilling to abandon them for fear of losing face and for want of another form of pressure. Salter concludes that the sanctions are hurting the most vulnerable and providing the Buyoya government a justification for the retreat from social service provision. Those most affected by them are the humanitarian agencies trying to bring in exempted supplies, while contraband importers and exporters operate with apparent ease. Finally the sanctions are unnecessarily hindering alternative political initiatives to bring about talks in Burundi. ♦

Bruderlein, Cl. & Erhardy, P. (1997)

### DHA Report on Regional Sanctions against Burundi.

35 pp. New York, OCHA or ReliefWeb <<http://www.reliefweb.int>>

In October 1997 the DHA sent a mission to the Great Lakes to assist the UN team in the processing of humanitarian exemptions under the regional sanctions regime to Burundi and in monitoring their humanitarian impacts. The mission learned that the aid agencies preferred the flexible procedures established with the Regional Sanctions Coordinating Committee over a more predictable but formalised arrangement. It also learned that the methodological difficulties and security constraints prevented the aid agencies from adequately monitoring the impact of sanctions on the population in Burundi, making it more difficult for them to argue the case for humanitarian exemptions. The mission then shifted its focus to learning from the UN experience in cooperating with regional sanctions authorities. The report examines the effectiveness, after 14 months, of the regional sanctions in achieving their political objectives. Whereas the regional authorities justified their imposition of sanctions in terms of regional stability, the restoration of good governance through democratic rules can be identified as a second, implicit objective. At the time of writing there were conflicting views within the regional coalition about whether the Buyoya government had made political concessions substantive enough to warrant an easing or partial lifting of sanctions. This led to unilateral actions by neighbouring countries, which may have given confusing messages to the Buyoya government. The latter started pointing to the lack of constructive responses from the political opposition in Burundi, and claiming that the sanctions were an obstacle to negotiations. The continuation of the sanctions regime can be seen as serving political purposes at the regional level, preserving the Arusha 'peace plan', rather than still being directed at the restoration of peace and democracy in Burundi. From a legal perspective, the regional sanctions were not authorised by the Security Council. The Security Council subsequently offered its political support, but the overall attitude of the international community remained ambivalent. There were doubts about the effectiveness of sanctions to promote democratic principles, and concerns that the sanctions would further jeopardise the already very difficult working conditions of the aid agencies in Burundi. The report also reviews the difficulties in obtaining adequate humanitarian exemptions. Although the Regional Sanctions Coordinating Committee after a few months granted significant exemptions, the

neighbouring countries did not necessarily follow the common policy, and often applied different standards. Problematically, illicit trade networks have developed quickly so that the sanctions after a few months no longer caused dramatic hardship for the Burundian population at large. Those most hampered by the sanctions therefore became the humanitarian aid agencies who followed the formal procedures to obtain clearances. Not surprisingly, aid agencies pragmatically started buying on the Burundian market supplied by sanctions-busting commercial importers. The report identifies the need to clarify the exemptions and clearance procedures at the very beginning of a sanctions regime. This is an area where the UN could provide assistance to the regional sanctions authorities. Aid agencies should develop a common capacity to monitor the impact of sanctions on the population. The UN can provide a local focal point to gather and share all information about sanctions and to coordinate the advocacy on humanitarian grounds. Inasmuch as sanctions have political objectives, that advocacy role, it is suggested, should not be taken on by the humanitarian coordinator in the affected country. ♦

Salter, G. (1998)

### **A Policy past its 'sell-by' date: An assessment of sanctions against Burundi**

23 pp. Available from the Policy Department, ActionAid, Hamlyn House, Macdonald Road, Archway, London, UK, N19 5PG. Fax (+44)171 281 2076.

An excellent and critical follow-up review of the economic impact and political effectiveness of the regional sanctions imposed against Burundi. In terms of economic and social impacts it is difficult to disentangle the effect of sanctions from the impact on production and distribution, of insecurity and displacement and of bad weather. Social indicators are also affected by the fact that the Burundian government spends 40% of its budget on the military, and only just over half of that on health and education. Yet sanctions have contributed to overall reduced living standards and an increase in poverty, especially among urban dwellers who are more dependent on purchased goods. This results mainly from the decline of industrial production, increased prices and reduced consumer buying power that the sanctions have caused. Although traders developed effective means of bringing in embargoed goods, sanctions did have important macro-economic effects. They reduced export earnings and hence access to convertible currency, because of increased freight costs for the exports of coffee and tea. And they triggered a suspension of development aid and balance-of-payment support by donors, leading to a rise in internal debt and external debt arrears, that will continue to have impact even when sanctions are lifted. Whereas humanitarian agencies initially found their exempted imports more subjected to bureaucratic delays than commercial operators, over time more exemptions were introduced. Especially after April 1998, the eased sanctions policy allowed also the Burundian government and commercial operators to import exempted items. Humanitarian agencies then could contract out most of their import requirements. Salter concludes however that the impact of humanitarian exemptions has been limited. Surely, it made more items available on the market than would otherwise have been the case, but high prices and distribution problems could mean that items, such as medicine, remained inaccessible to most Burundians. As important as imports then are the distribution efforts of the aid agencies. Like Gibbons for Haiti, Salter finds however that humanitarian exemptions cannot neutralise the general macro-economic impact of sanctions, or on their own reverse the negative social indicators. Most problematic however has been the political management of sanctions. Reviewing the original context in mid-1996 when sanctions were

imposed by a regional grouping of African states, Salter concludes that at the time it was probably the best option. Since then however many participating states have abandoned their support for sanctions. Western powers and the UN Security Council in late 1998 have started calling for a review of the sanctions policy, and used their funding of the Arusha peace talks as leverage to pressure for a lifting of sanctions by early 1999. Astonishingly, Mr. Nyerere, facilitator of the Arusha peace process, rather than Buyoya, came to be seen as the obstacle to progress towards a political settlement in Burundi. How did this happen? In Salter's analysis, because of the inflexibility in the political management of the Arusha process and of the sanctions instrument. Sanctions probably helped put pressure on Buyoya and his supporters to talk to the opposition and to restart constitutional politics, mainly by turning them into international pariahs. In June 1998 however the political scene changed when Buyoya and the main opposition party Frodebu came to a power sharing agreement known as 'partenariat'. Buyoya was subsequently sworn in as constitutional head of state and the National Assembly was enlarged to include smaller parties. This was an opportunity to lift sanctions and to develop new political initiatives. But Tanzania and Mr. Nyerere failed to do so and continued to focus on Arusha as the only legitimate forum for dialogue. The sanctions policy however had lost credibility when now also the Frodebu in Burundi started calling for it to be lifted. Moreover, the Frodebu and CNDD leaders-in-exile, involved in the Arusha talks, were no longer seen as representative by the Frodebu in Burundi or by the CNDD militia commanders. There was also no more justification for the continued involvement of smaller parties, now represented in the National Assembly, to complicate the Arusha process. In short, sanctions seemed to have become a substitute for creative and alternative political initiatives. The inflexibility in their continued application revealed a lack of close monitoring of political developments in Burundi, and eventually marginalised those that continued to support them. ♦

*Majid, N. (1998)*

### **Northern Iraq. Sanctions and the UNSCR 986**

*40 pp. Available from Middle East desk, Save the Children Fund (UK), 17 Grove Lane, London, UK, SE5 8RD.*

After years of refusal, in March 1996 the Government of Iraq (GOI) signed a Memorandum of Understanding with the UN that cleared the way for an oil-for-aid programme (referred to as Security Council Resolution 986). Political events delayed its coming into effect until December 1996, and the first supplies did not arrive until March 1997. The UN put a first ceiling for programme at \$ 2 billion, only 65% of which goes to humanitarian imports, the rest being allocated to the GulfWar Reparation Fund and to cover costs of UN agencies. In March 1998 the Security Council unilaterally raised the ceiling to \$ 5.2 billion, in recognition of the magnitude of need. However the current low prices for oil on the world market and Iraq's reduced export capacity lead observers to believe it in practice will not be able to generate more than about \$ 3 billion. This report looks at the contextual differences between central/south Iraq and north Iraq (Kurdish Iraq), and the implications for the management of this humanitarian exemptions programme as well as the differential impact on the different regions of Iraq. In central and south Iraq, the oil-for-aid programme is implemented by the GOI with the UN acting as monitors of the end-use of aid. To that effect a number of geographical, sector and multi-disciplinary monitors have been deployed. They have however different reporting lines, and have not been investing much in impact assessment. Kurdish Iraq, a designated 'safe haven' under international protection, is subjected not only to the international sanctions, but also to an internal embargo by the GOI. Here the UN agencies act as implementers of the oil-for-aid programme. There are general UN problems with overlapping mandates, staff of varying quality and coordination between agencies, some of which the UN Office of the Humanitarian Coordinator for Iraq (UNOHCI) in August 1998 started to address through a 'Programme Consultation Process'. There are however also management problems that arise from the different context in north Iraq. The failure to recognise these differences in the programme design comes from the continued recognition of the territorial integrity of Iraq by the international community. One consequence is inadequate decentralisation of management decisions to the offices in north Iraq. A second consequence is the pervasive short-termism of the oil-for-aid programme in north Iraq, with few hopes or attempts to programme for sustainability where the future of the 'safe haven' remains

so uncertain. A third is the standardisation of the aid package for Iraq, without adaptation to the specific socio-economic conditions that now pertain in Kurdish Iraq. Prior to the 1986 programme, the Kurdish economy has begun to recover. Agricultural production and trade, including the import of food stuffs and the smuggling of oil products to Turkey, were the main driving forces of that recovery. The revival of agriculture also meant that Kurds began to return to the country-side, from which they deliberately had been driven by the Iraqi government in the Anfal Operation, which peaked in 1988. Agricultural production in north Iraq is now stagnating. For non-wheat products the main reasons appear to be a constricted market, with few export possibilities and no access to the markets of central/south Iraq due to the internal embargo. For the main crop, wheat, however, the biggest disincentive comes from the import of flour under the oil-for-aid programme, that has depressed prices so much as to be a strong disincentive. This now undermines the economic basis of Kurdish Iraq, something that the Anfal campaign also had aimed to achieve. This exploratory research also pays some attention to different geographical and socio-economic vulnerabilities. Some governorates are found to be economically stronger than others. Some socio-economic groups, such as the civil servants and others with no access to land benefit from the aid programme, but others, notably in the wheat-producing and processing sector are actually 'losing' from the humanitarian exemptions. ♦

*Department of Humanitarian Affairs (1997)*

**Note Concerning the Possible Humanitarian Impact of the International Flight Ban Decided in Security Council Resolution 1070 (1996)**

*17 pp. New York, Office of the Coordinator for Humanitarian Assistance.*

In August 1996 the Security Council voted for an international flight ban against Sudan, but delayed its entering into force. Following preliminary assessments of the potential humanitarian impact by the UN agencies in Khartoum in December 1996, the Dpt. for Humanitarian Affairs carried out a further pre-assessment mission in early 1997. This concluded that the international flight ban would have an impact in several important ways. It would have an impact on the evacuation of critically ill patients for sophisticated medical treatment in Jordan, and the on import of life-saving drugs. Both activities are undertaken by Sudan Airways at subsidised cost. The flight ban would also impact on the ability of the government authorities to provide basic food and medical supplies within Sudan. Indeed, the government relies on domestic air-carriers to transport food from surplus to deficit regions in times of acute shortage, to transport animal vaccines, seeds, tools and pesticides, and spare parts for agricultural machinery. It also uses planes for aerial spraying. Furthermore aircraft are used for the domestic transport of human vaccines, of emergency epidemiological teams and of bacteriological samples in case of a disease outbreak investigation. The domestic operations of Sudan Airways and of private airlines would be affected by an international flight ban, because both are dependent on international access for maintenance and repairs and for access to foreign currency. For the same reasons relief operations in government-controlled areas would be affected, because they too rely on domestic air transport for the movement of personnel and sometimes supplies. Although technically speaking the international flight ban would not affect the aircraft used by Operation Lifeline Sudan, the latter operate flight schedules with permission from the Government of Sudan. That permission could become problematic if Sudan is subjected to an international flight ban. ♦

Garfield, R. and S. Santana (1997)

## The Impact of the Economic Crisis and the US Embargo on Health in Cuba

*American Journal of Public Health* 87(1)15-20.

The US embargo against Cuba since 1961 is the longest in modern history. In 1992 it was made more stringent with the passage of the Cuba Democracy Act. This affects all US subsidiary trade, and now also includes trade in food and medicines. Pressure is exercised on other countries to stop trading with or providing even humanitarian goods to Cuba. The InterAmerican Human Rights Commission of the Organisation of American States considers that these regulations violate international human rights accords. Cuba has followed social policies in favour of equity and priority for vulnerable groups. This has resulted in high levels of education, high rates of hospital beds and of physicians per capita, a national system of nutritional monitoring and ready access to health services. Although only changes in the cost of medicine and the unavailability of medicines and medical equipment produced in the USA can be directly attributed to the embargo, the reduction in food and medicine imports and the increase in the cost of imports aggravate the effects of the economic crisis. Continued social expenditure, a strong medical service infrastructure and the level of education of the population have prevented a dramatic collapse in health and nutrition, but the system is under strain. Public programmes targeting children, women and the elderly make that the burden of the nutritional deficit falls predominantly on adult men. The lack of medicine, and the reduced access to clean water contribute to a gradual rise in infant and maternal mortality, and in deaths from influenza, pneumonia and diarrhoeal diseases. ♦

Garfield, R. (1997)

## The Impact of Economic Embargoes on the Health of Women and Children.

*Journal of the American Women's Medical Association* 52(4)181-184

The health impact of an economic embargo is indirect and complex, and may become apparent only after years of resource shortages. All embargoes increase costs and reduce economic activity. Notwithstanding the provision for exemptions for food and/or medicines the comparative review of six countries subjected to embargoes shows in all but one (South Africa) limitations on the importation of these items. Measuring the impact on health poses significant methodological problems and quantification and attribution is notoriously difficult. The available evidence however indicates that young children are likely to suffer from poorer nutrition, increased infectious disease transmission and a medical system with decreased capacity to respond to their increased need. Data on the effects of embargoes on women are far more limited, but maternal and perinatal mortality can be expected to rise. The swiftness and severity with which embargoes may impact on health is influenced by certain factors. One of these is the potential resilience of 'health assets' such as public education, healthy behaviour, trained health workers and health infrastructure. Another is the degree to which the available basic resources are mobilised to protect the micro-environment of the child. Improved health data gathering and -reporting, refocused public health education, increased breast feeding, protecting food and water supplies from contamination, insuring immunisation and stocks of a small number of emergency medicines can help limit the impact on women and children, and in some cases (Haiti, Nicaragua, Cuba) has actually led to a reduced infant mortality during an embargo, even if child mortality of under fives rose (Haiti). Iraq for example, has been less successful in modifying the role of public health than Cuba. Finally, better humanitarian exemptions are required. This implies uniform criteria and definitions and operational methods for sanctions committees. Exempt goods should include medical equipment, tires for ambulances and drugs for chronically ill patients. Investments should also be made in better impact monitoring studies. These recommendations will raise costs to the embargoing countries. But 'cheap sanctions' disproportionately affect the poor and powerless. ♦

Garfield, R. (1998)

### **Changes in Mortality in Iraq in the 1990s: Assessing the impact of the economic sanctions**

Draft. Columbia University, 630 West 168th Street, Box 6, New York, NY 10032.

Prior to the sanctions Iraq was a country very dependent on food imports. It also had a health service that reached virtually the total population, but was very centred on curative health. It is now generally accepted that the sanctions are causing excess mortality, certainly among children. The political argument is about who is responsible: Saddam Hussein or the Allied Coalition maintaining the sanctions? The UN already in 1991 offered an oil-for-aid programme which Iraq for several years refused to accept. Not until May 1996 was a deal signed. The first foodstuffs under the oil-for-aid programme arrived in Iraq in April 1997, the first medical supplies in May 1997. The author carefully examines the available sources on demography and mortality. Current Iraqi figures are not considered reliable. The health information system is currently entirely focussed on the hospitals and has broken down. There is probably 'diagnosis drift' among the physicians in the health service, all deaths are automatically attributed to sanctions, and figures are further open to manipulation for political purposes. The author however carefully reviews the various independent international studies. On the basis of statistical analysis he concludes that there has been an excess mortality of some 240,000 Iraqi children under five between the Gulf War and the end of 1997. This is four times the estimated number of war related deaths. This represents an increase in child mortality that is otherwise unknown in the literature. It also represents a loss of three decades of progress in reducing mortality in Iraq, which constitutes a social disaster. That Iraq did not better contain the impact of sanctions on infant and under five mortality is attributed to the failure to mobilise basic resources to protect the micro-environment of the child, and to reorient the health service towards public health and health education towards simple and preventative measures. Common methods for demographic assessment require a lag time of 3-5 years for assessing mortality. There is a need then, under conditions of sanctions, to actively invest in monitoring and in the development of more timely monitoring indicators. ♦

no author (1998)

### **Interim Report of the Inter-Agency Mission to Sierra Leone.**

9 pp. Document ref. S/1998/155 on ReliefWeb: <<http://www.reliefweb.int>>

Following a military coup in May 1997, the Economic Community of West African States (ECOWAS) in August imposed a total trade embargo on Sierra Leone. In October the UN Security Council expressed its support for the ECOWAS sanctions and itself imposed a partial embargo, mainly on fuel and arms, as well as a travel ban on members of the military junta and their families. Upon request of the Security Council, a UN inter-agency mission went to assess the humanitarian situation in Sierra Leone in February 1998. Renewed fighting in Sierra Leone obliged the mission to remain in Guinea, also the major entry point for humanitarian assistance by land. The mission identified increased humanitarian needs, due to the renewed outbreak of fighting which also caused new internal displacement, while the embargo was increasing the market cost of food and medicines in Sierra Leone. Yet notwithstanding the fact that ECOWAS had agreed to earlier OCHA recommendations on humanitarian exemptions procedures, 5 months after the imposition of its embargo, no food supplies had been approved. Supplementary feeding supplies remained blocked in UN warehouses in Guinea while food stocks in Sierra Leone were depleted. Moreover, in January 1998 the Guinean authorities also began to stop shipments of medical supplies by humanitarian agencies. The report points to the lack of capacity in ECOWAS to administer humanitarian exemptions. But it also mentions the concern, expressed for example by the President-in-exile, that food supplies would be looted or diverted by armed groups in Sierra Leone. This is not confirmed by the aid agencies, whose experience is that only a few warehouses were looted at the time of the coup, and who generally have been able to transport and distribute relief food without security problem. The aid agencies also believed that they could run a cross-border operation without a need to hold major food stocks in Sierra Leone. The interim report recommends that the UN Emergency Relief Coordinator draws the attention of the Security Council to the problems with humanitarian exemptions, and requests the humanitarian agencies on the ground to ensure that they operate in an impartial manner, and maintain their independence from any armed force in Sierra Leone. ♦



*O'Sullivan, M. (1997)*

## **Household Entitlements during Wartime: The experience of Sri Lanka**

*Oxford Development Studies 25(1)95-121.*

Since 1991 the government of Sri Lanka has imposed an embargo against areas of the island controlled by the Liberation Tigers of Tamil Eelam. The embargo is official for the North and unofficial for the East. Sri Lanka is an example of a country engaged in civil war, that has been able to maintain macro-economic growth, under policies of liberalisation and adjustment. Unusual also, the government of Sri Lanka has maintained social expenditures in the LTTE controlled areas. Till the end of 1995, the cost of war has mainly been born through reductions in capital accumulation. The author uses a theoretical framework that modifies A. Sen's entitlement theory. She distinguishes between public, civil and market entitlements. Health, education but also food rations for example, are public entitlements, normally the responsibility of government. Civil entitlements refers to the assistance provided by the family and non-governmental organisations. Market entitlements are the income that households can gain through sale of products and services on the market. The overall analysis highlights that the entitlements of people in the war zones have diminished compared to those outside the war zones, but less so than in most other war areas around the world. Agriculture and fishing, as well as manufacturing, cottage industries and the professions have all been severely affected and reduced by the war

and the internal embargo. On the other hand, people have been able to support their income through the informal economy, through assistance from international and local NGOs and from LTTE-run organisations. Moreover, unusually, the government of Sri Lanka has maintained its overall line ministry infrastructure in the LTTE controlled areas, including health and education, albeit at a reduced level of activity and service provision. The government therefore remains a very important employer in the LTTE controlled North, while also continuing to pay pensions. Moreover, through the Commissioner of Essential Services, the government provides relief assistance to the war affected populations in the LTTE controlled North. The reasons for this are political, ie. a continued signalling to the Tamils in the LTTE areas and to the international community, that the government retains control of its territory and continues to recognise its obligations towards all Sri Lankan citizens. A third source of income support are remittances from abroad. Compared to the North, the situation of people in the East is more vulnerable. The East is ethnically more mixed, and has been the theatre of fluctuating guerrilla warfare, rather than solid control by the LTTE. The mode of warfare therefore is characterised by much more insecurity, intimidation and terror, which has led to a greater breakdown of social capital. Historically the East also has been less developed than the North and does not have a similar tradition of strong civil society. It has produced less professionals, who, having migrated, can return remittances. And the LTTE run organisations do not operate in the East. ♦

# Humanitarian Exemptions

*Van Brabant, K. (1996)*

## **Banned, Restricted or Sensitive. Working with the military in Sri Lanka** *in Relief and Rehabilitation Newsletter 5:4-6.*

This article complements the above one by O'Sullivan, in describing the increasing difficulties international humanitarian agencies experience in obtaining effective clearance from the Sri Lankan military to transport relief supplies across the lines into the LTTE controlled areas. Although there is a stated official policy on which items are banned or restricted, and stated procedures on how to obtain exemptions, in practice, with the intensification of the war in late 1995, the military administrators in Colombo do not necessarily follow the stated policy, while the lower ranking military officers at the crossing points in Vavuniya and in Trincomalee do not automatically honour the administrative clearance documents issued by the Ministry of Defence. The dialogue is complicated by the fact that aid personnel do not get access to the military administrators in the capital, and that military personnel on the ground rotates every six months. ♦

*no author (1996)*

## **UNHCR Discussion Paper on Humanitarian Action in a Sanctions Environment: The impact of sanctions imposed on the Federal Republic of Yugoslavia on the delivery of humanitarian assistance**

*7 pp. Presented at the Round-Table on the Effectiveness of United Nations sanctions in the case of the Former Yugoslavia, Copenhagen.*

Security Council resolution 757 of 1992 imposed sanctions on the Federal Republic of Yugoslavia (Serbia-Montenegro) for which general exemptions were only granted to UNPROFOR, the International Conference on Former Yugoslavia and the EU Monitoring Mission. UNHCR failed to obtain a similar institutional exemption for itself and other humanitarian agencies, but, through liaising closely with the Sanctions Committee and the Security Council, obtained a fast-track approach through the introduction by the Sanctions Committee of a 'no-objection procedure'. Resolution 820 of April 1993 however tightened the embargo, severely complicating and delaying the approvals for commodity and financial transfers including of UNHCR and its suppliers. UNHCR was serving refugees and internally displaced people in or from logistics bases in Serbia-Montenegro. Moreover the stricter guidelines were applied retro-actively, which led to the blockage of large numbers of truckloads at various borders at significant cost to the relief effort. The tighter application of sanctions initially led to a net decrease in humanitarian aid, and placed significant additional administrative and reporting requirements on UNHCR. Negotiations also were required with the Sanctions Committee to get exemptions for the personal belonging of refugees returning home, and for items such as fuel required to heat shelters in which victims of the conflict were accommodated. A number of arrangements introduced in the autumn of 1993 finally again facilitated the flow of aid. This included bulk sanctions clearance for the full package of humanitarian items to be imported within a given period, up to six months. UNHCR implementing partners were allowed to include their requests under the UNHCR bulk submission, and UNHCR was allowed to make financial transfers to its local bank in

Belgrade. Fuel, considered a strategic item, was granted to UNHCR but only under very tight rules of strict monitoring and reporting, which imposed significant operational and administrative costs on the agency. Recommendations from the experience are: closer consultation between the sanctions-imposing and -enforcing authorities and the humanitarian agencies, the retention of the bulk package approach as a useful

model, and an enlargement of the type of agencies who can directly submit requests for exemptions to a Sanctions Committee. Indeed, only governments and intergovernmental organisations were allowed to approach the Yugoslavia Sanctions Committee, with NGOs having to go through either one of these. Smaller NGOs therefore often were not able to present requests for exemptions. ♦

# Sanctions Impact on Trading Partners of the Target Country

*Kovacheva, N. & R. Raicheva (1997)*

## **The Effectiveness of UN Sanctions.**

### **Their realisation in the sphere of human rights like the right to food and the right to adequate healthcare**

*27 pp. Paper presented at the Tilburg conference on UN Sanctions. Effectiveness and effects in the field of human rights, November 1997.*

This paper argues that the UN embargoes against Iraq and in particular against Serbia-Montenegro had very negative effects on Bulgaria, whose economy and society were in a period of transition following the demise of the East bloc system. The authors question the official claim of the Bulgarian Ministry of External Affairs that the two embargoes led to some \$8 billion worth of losses for the Bulgarian economy (Iraq's debt to Bulgaria is said to amount to \$3 billion judged an exaggerated claim, in the light of a GNP of \$10 billion. Yet they do hold that the embargo had significant economic impacts. The official bilateral trade between Bulgaria and Former Yugoslavia is said to have reduced from some \$360 million before the embargo to some \$60 million by 1995. This means a loss of state revenue from custom's fees and taxes on profit. Some 300 Yugo

companies are said to have continued operating as legal entities in Bulgaria to avoid the embargo. Short-term capital from the Former Yugoslavia also sought shelter in Bulgaria, increasing the money supply, leading to an overvaluation of the Bulgarian currency and, being volatile, creating a more uncertain environment for fiscal policy. More worrying however for the authors has been the rise in organised crime, smuggling and corruption. The embargo is held to have contributed to the expansion of Serbian and Bulgarian mafia-type activities, with eg. the introduction of pyramid schemes (as in Albania) for money laundering. Another front for such activities and for money-laundering were foundations and non-profit organisations. This has led to suspicion against and a discrediting of the NGO sector in Bulgaria. Ordinary Bulgarian citizens also turned to smuggling while the perceived corruption of customs, and arbitrariness of the administrative courts dealing with suspected embargo busting, undermined confidence in the institutions. Finally doubts also became widespread about the integrity of politicians. The embargo then has perpetuated the low civic sense in Bulgaria from the communist years. Add to this the absence of compensation to third states, the authors ask whether countries in such transitional stage should at all comply with UN mandatory sanctions? ♦

*Doxey, M. (1998)*

### **United Nations Economic Sanctions: Minimising adverse effects on non- target states**

*19 pp. Paper presented at the Symposium on Targeted Sanctions. New York, 7 December.*

The costs of international military action or peace-keeping are shared. Yet although articles 49 and 50 of the UN Charter set out the principle of burden-sharing of the cost of sanctions on sender states, in practice this does not happen very much. The effect might be a growing unwillingness among economically less strong UN member states to support Security Council sanctions, thereby limiting their effectiveness. The issue of assistance to non-target states is being studied by eg. the Special Committee on the Charter of the UN and the sanctions sub-group of the General Assembly's Informal Open-Ended Working Group on the Agenda for Peace. Moreover in the summer of 1998 a UN Expert Group meeting on the subject also took place. This paper provides an overview of the current lines of thought. It also refers to the claims for compensatory assistance from non-target states in the case of sanctions against Rhodesia, Iraq and the Federal Republic of Yugoslavia. The measures that are proposed have to take into account the political deadlock between those who favour generous compensation and permanent administrative arrangements within the UN Secretariat, and those who strongly oppose this. A major obstacle in dealing with claims for compensation is assessing the scope of the problem. Sanctions can carry

direct and indirect, primary and secondary, and temporary and long-lasting effects, not only on the target, but also on the senders, especially the close trading partners of the target. Estimating this multiplicity of impacts is further complicated by methodological problems. Measurement requires reliable and up-to-date data which are not always available. There may also not be the resources to invest in costly and time-consuming measurement exercises. Still, the international financial institutions, notably the IMF and the World Bank, have expertise that could be usefully invoked. The current recommendations can be grouped in two sets. Prior to the imposition of sanctions, it is advised that the potential impact on close trading partners of the target be assessed, and that these be consulted. Efforts should be made to target sanctions as much as possible, and consideration could be given to closely monitored exemptions for vulnerable trading partners. When sanctions are imposed, it is recommended that the Security Council, already in its initial resolution, include a call for assistance to non-target sender states as it did in the case of Rhodesia. It is also suggested that a group of international experts be established, for the most severe cases even under the direction of an appointed Special Representative of the Secretary-General, to carry out impact assessments and to formulate action-oriented proposals. Sanctions Committees should streamline their procedures and become more transparent in their deliberations. Measures of assistance could be discussed at a specially convened donor conference. They can consist of direct financial help, but also of more indirect measures to offset economic loss, such as tariff adjustment, technical and/or humanitarian assistance. ♦

# Lesson Learning from Sanctions Cases

*no author (1996)*

## **Report of the Copenhagen Round Table on United Nations Sanctions in the case of the Former Yugoslavia**

*held at Copenhagen on 24-25 June 1996. 17 pp. S/1996/776.*

The purpose of the Round Table in Copenhagen was to review the experience of sanctions against the Former Yugoslavia to preserve institutional memory. It is in essence a chronological and descriptive, rather than critical summary of events and decision-making of a still exceptional machinery deployed to enforce the sanctions against Serbia-Montenegro and the Republica Srpska. That machinery comprised the deployment, upon request from the neighbouring countries, of Sanctions Assistance Missions (SAM) with customs officers drawn from states member of the Organisation for Security and Cooperation in Europe (OSCE). They were supported by a communications and coordination centre (SAMCOMM) set up in DG21 of the European Union in Brussels. New was the creation of a post of an EU/OSCE International Sanctions Coordinator, to provide political oversight to SAMCOMM and the SAMs, to liaise with the UN Yugoslav Sanctions Committee in New York and to facilitate the political coordination with the political authorities of the states involved in the enforcement of the sanctions. Further enforcement machinery consisted of the Western European Union Danube mission with its own patrol boats, the naval 'Operation Sharp Guard' in the Adriatic Sea which came under single command and control in 1993, and the

International Conference on the Former Yugoslavia mission to Bosnia-Herzegovina, whose civilian staff, together with members of the Yugoslav Red Cross and Yugoslav customs monitored the sanctions (and the humanitarian exemptions) imposed by Serbia-Montenegro on the Bosnian Serbs. The report ends with series of observations and recommendations. Among these are the need for greater clarity in Security Council resolutions, support to sanction-enforcing states with domestic legislation, and a credible monitoring and enforcement arm. The working of the UN Sanctions Committees is felt to be open to improvement. They should be more transparent, provide guidelines for interpretation of sanctions to states, and regularly review the effectiveness and impact of sanctions. The report recommends regular consultation between the UN Sanctions Committees and humanitarian organisations, to minimise the humanitarian impact. It recommends institutional exemption from sanctions for humanitarian organisations. The difficulties caused by the sanctions on the states neighbouring Former Yugoslavia, themselves in transition, are acknowledged. The report concludes that the sanctions against the Former Yugoslavia demonstrate that they can be a credible and effective policy instrument: the sanctions are held to have been the single most important reason for the Government in Belgrade to accept the negotiated peace at Dayton. (A contending analysis is presented by J. Gow in 'Triumph of the lack of political will. International diplomacy and the Yugoslav war. 1997, London, Hurst & Co., who believes that a change in the balance of force was the critical factor leading to the acceptance of the Dayton agreements). ♦

# Targeted Financial Sanctions

*Newcomb, R. (1998)*

## **Targeting Financial Sanctions**

*10 pp. Paper presented at the Expert Seminar on Targeting Financial Sanctions, Interlaken, Switzerland.*

As Director of the Office of Foreign Assets Control the author presents some of the US experience with the blocking of foreign assets of governments, companies and individuals. The cases illustrating the presentation are Iraq, the Federal Republic of Yugoslavia, Libya and US actions against the Colombian Cali drug cartel. The latter case highlights an example of the use of the Specially Designated Nationals programme, whereby individuals are publicly named as belonging to or being considered an agent for a target group. Notwithstanding certain successes, the author identifies areas where improvements are required. The first is clarity and specificity in what and who is the object of sanctions (scope and coverage). A second is the need for research about the target, its possibly hidden accounts or front companies etc., as well as the need to share that information among the public and private entities that are requested to enforce sanctions. A third is the need for an adequate enforcement regime, the monitoring of compliance with sanctions and the potential sanctions against violators of the sanctions regime. This requires a professional sanctions apparatus with adequate administrative resources. It is proposed that a technical sanctions experts group meets regularly to explore how financial sanctions can be made more effective and administerable. ♦

*Carver, J. (1998)*

## **Making Financial Sanctions Work. Preconditions for successful implementation of sanctions by the implementing state.**

*23pp. Paper presented at the Experts Seminar on Targeting Financial Sanctions, Interlaken, Switzerland.*

This article focuses on the question of how Member States translate mandatory Security Council resolutions on sanctions into national directives. A crucial issue here is balancing international conformity with the need to ensure that sanctions law is compatible with local conditions and legally allows the cancellation of pre-existing contractual obligations with the target. To be clear and effective the national instruments need to be sufficiently sophisticated. The article contrasts institutional and legal mechanisms in the USA and the UK, and contains references to some other countries and the growing scope for European Union Resolutions regarding sanctions. It goes into quite some detail about the national implementation of sanctions against Iraq and the evolving practice of the Iraq Sanctions Committee. In translating Security Council resolutions into national practice, a number of countries can resort to standing, enabling legislation. In the UK this has been in particular the Import Export and Customs Powers (Defence) Act, the United Nations Act and the Emergency Laws. In the USA the most immediately applicable statutes are the International Emergency Economic Powers Act, the Trading with the Enemy Act, the International Security and Development Cooperation Act, the National Emergencies Act and the United Nations Participation Act. The different Acts in the UK tend to focus on a foreign country's assets and gold in the UK and on the import and export of goods. There is little provision regarding non-trade related services. They can be fine-tuned, for example through Directives from the Treasury, Notices from the Bank of England or Orders from the Secretary of State. Their application also to the London branches of foreign banks and to the UK dependent territories such as the Channel Islands, the Cayman Islands and formerly Hong Kong, can be controversial. In the US the different laws give the President different degrees of autonomy which can influence his choice of legal instrument. The different laws also carry different penalties for offenders. Many countries implement

Security Council resolutions on sanctions through passing secondary legislation to amend existing financial and commercial regulations. This of course presupposes a detailed legislative system in place in relation to financial, foreign exchange and commercial transactions. Certain Member States may not have a sophisticated legal apparatus, and the global trend towards free trade and deregulation is also dismantling existing regulatory frameworks. Another factor influencing secondary legislation is the existing system for administering sanctions in a given State. Most States adapt the existing bureaucratic framework. Where different agencies get involved, this can result in a complex bureaucratic maze. In the UK for example, trade embargoes are administered through the Sanctions Unit of the Dpt. of Trade and Industry. Assets freezes on the other hand have up till now been administered by the Bank of England. By contrast, in the US, the Office of Foreign Assets Control within the US Dpt. of Treasury is the primary body administering and enforcing sanctions. This centralisation facilitates uniform record-keeping and reporting requirements and a more coherent set of regulations. The pre-existing administrative traditions of industrial and financial regulation can lead to inconsistencies between different laws and regulations among Member States. That enormously complicates the task of international traders and of the international banking community in implementing sanctions. Over time, the UN is developing institutional practices that can support Member States help their commercial actors comply with sanctions. With regard to the sanctions against Iraq for example, the Iraq Sanctions Committee has developed guidelines and streamlined some of its procedures, there is close coordination with the experts monitoring the oil-for-aid programme implementation in Iraq, and in 1997 an Office of the Iraq Programme was also established in the UN to consolidate and manage the activities of the Secretariat in relation to the embargo and the oil-for-aid programme and to support the activities of the Iraq Sanctions Committee. The powers of the European Union to adopt sanctions have also been increasing, and EU Regulations help ensure uniform implementation throughout the EU. Where inconsistencies arise between the EU and national law, these differences can be resolved via the European Court of Justice. ♦

*Yoshikawa, M. (1998)*

### **Implementation of Sanctions Imposed by the United Nations Security Council – Japan’s experience**

*13 pp. Paper presented at the Expert Seminar on Targeted Financial Sanctions, Interlaken, Switzerland.*

Japan is a country that does not have enabling legislation, and so far has been using secondary legislation to implement sanctions resolutions. The main legal tool is its ‘Foreign Exchange and Foreign Trade Control Law’. The ‘Aviation Law’ can be used to implement a flight ban. One weakness of the existing legislation is that it cannot prohibit financial transactions by Japanese nationals and Japanese corporations residing or registered in foreign territories. If all countries would implement UN mandated sanctions, this however should not pose a problem. Although some Japanese academics have argued for the adoption of primary, enabling legislation, this is unlikely to happen until it is shown convincingly that the existing legal instruments are inadequate. The author recommends that Member States generally would report with more detail and specificity how they implement mandatory sanctions. The annex contains Japan’s report to the United Nations on the measures it took to implement the sanctions against UNITS in Angola. ♦



Reid, N., S. Eckert, J. Chopra & Th. Biersteker (1998)

## **Targeted Financial Sanctions: Harmonising national legislation and regulatory practices**

*19 pp. Working paper presented at the Symposium on Smart Sanctions, 7 December, New York. Email: <iis@brown.edu>*

There is some evidence that financial sanctions, combined with comprehensive trade embargoes, increase the success rate of sanctions. Recent discussions on financial sanctions have highlighted the issue of different national legal and regulatory systems. These differences have consequences for private sector compliance and for the enforcement of financial sanctions. For banks for example, as primary enforcers of financial sanctions, protection from suit for breach of contract, is very important. That protection needs to come from adequate national legislation. The paper reports on work in progress. It presents the results of a comparative study of the systems by which financial sanctions are defined and administered in six major international financial centres: the USA, UK, Germany, France, Switzerland and Japan. The underlying thesis is that increased dialogue, cooperation and harmonisation of the legal and administrative systems in these key countries, could significantly increase the practical effectiveness of financial sanctions at global levels. Even if targets can move their assets elsewhere, if these assets are significant, at some point they will need the major financial centres and convertible currencies. The question of how significant off shore financial havens are requires still more research. So too the question of the technical and political feasibility of institutional reform to achieve greater harmonisation in these key countries. Rendering financial sanctions more effective at global level will require greater policy harmonisation, common definitions and clarification of language used in enabling resolutions, and greater sharing of information on the targets and their potential assets.

The comparative research so far has highlighted three major areas of difference between the six countries. First is the issue of the underlying statutory authority for financial sanctions. The USA and UK have a comprehensive prohibitive approach, which draws on primary, enabling legislation. The four other countries use a case-by-case approach, that relies on refusal of authorisation, and draws on existing general purpose legislation. The latter therefore do not rely on the compliance of the financial institutions, but rather insert the executive branch in the decision-making chain for financial transactions. This approach runs counter to the global trend for de-regularisation. A second area of difference is that of the agencies and instruments used to implement financial sanctions. The Office for Foreign Assets Control is a uniquely American institution. In the other countries, relevant ministries take the lead, also delegating authority to the Central Bank. These offices prepare or issue secondary legal instruments that outline the elements and the scope of the financial sanctions. Such clarifications come in the form of decrees, secondary legislation, regulations or notices. The USA has the most inclusive approach to financial sanctions, in terms of its definition of what constitutes an 'asset', who is targeted and who needs to comply with the sanctions. Japan has the most exclusive approach. Finally there is the issue of the legal definitions used in the interpretation of the language of sanctions. It is in principle possible to draw up model legislation, which would provide the key ingredients that need to be translated into domestic legislation. Primary, enabling legislation in this regard seems more useful than the case-by-case approach. Model legislation will however require clarification and agreement on such issues as what is included under the notion of 'asset', who is included in the 'target', what the scope is of who needs to comply, what the rules are for the management of blocked and frozen assets, and under what rules assets can be 'seized'. Finally, a harmonisation will also be required of the penalties for violations. ♦

# Commercial Interests and Sanctions

Mitchell, J. (1998)

## Companies in a World of Conflict

314 pp. London, Earthscan/The Royal Institute of International Affairs.

This book groups the papers and summarises the discussions from a workshop organised in April 1997 by the Norwegian Statoil and the UK Royal Institute of International Affairs. It reflects on today's challenges for the transnational oil and gas companies. These include not only operating in a global economy, but also having to respond to global concerns for the environment and a growing concern for human rights. Transnational oil and gas companies are increasingly engaged as social actors, especially by campaigning NGOs, in an also increasingly global civil society. The companies are held to account for promoting economic prosperity, but also environmental quality and social equity. The transnationals cannot disregard human rights, and they face a dilemma in that there is significant overlap between the geography of oil and gas resources and the geography of human rights violations. The increased use of international sanctions in the 1990s poses another dilemma, in that it adds reputational – and political risks to the commercial risks. Unlike traders and even more so bankers, oil and gas companies make significant investments which makes it far more difficult for them to respond flexibly to the risk or imposition of sanctions. Spence's contribution reviews the South Africa case. He concludes that the demise of the apartheid regime was the result of many contributing factors, but also that the withholding of foreign loans and –investment were more important than trade sanctions. Hollis offers an excellent analysis of the security and commercial policies of the Western powers towards the Middle East. There UN sanctions are in place against Iraq and Libya and US sanctions against Iran and Libya. These international security policy

measures have an impact on the position of Saudi Arabia and the Gulf States as oil producers. If not managed carefully, in the medium-term, these sanctions may affect the global supply of oil and gas against a background of growing demand. Hollis also analyses the differences between Western powers, for example with regard to the perceived threat posed by Iran or the question whether sanctions against Iraq can only be lifted when Saddam Hussein has gone? There are competing political perceptions and commercial interests, that complicate the maintenance of an international coalition. Waelde offers a rich and insightful analysis and discussion of 'secondary sanctions'. These are the sanctions imposed, typically by the US, against companies that violate US sanctions against a target country. The main problem is the US attempt to also apply such secondary sanctions against foreign-registered branches of US companies and against foreign companies, particularly when these have commercial interests in the US. The purpose of the latter measure is to maintain a level playing-field, and to prevent foreign companies from exploiting the market opportunities that are denied to the US companies by the US government. In some instances this attempt at 'extra-territorial' enforcement by the US meets with a measure of international approval. There are few if any effective institutions that can enforce international norms, and sometimes it is tolerated that the US uses its global power to fill that vacuum. In other instances such US attempts at 'extra-territorial enforcement' will be strongly resented. That has been the case eg. with the Helms-Burton anti-Cuba act and the D'Amato-Kennedy act against Libya and Iran. Other countries, notably the Europeans, have responded with 'blocking legislation' obliging companies to ignore US sanctions. There is a real risk then, for companies with commercial interests in the USA, of doing business in countries that are or may be targeted by sanctions. ♦

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