

ECONOMIC SANCTIONS: RETHOUGHT ENTIRELY?

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INTRODUCTION

The use of economic sanctions has become widespread since the demise of the Cold War. The most damning criticism of such use came from within the UN itself, when the Sub-Commission on the Promotion and Protection of Human Rights asserted that the use of economic sanctions should be rethought entirely. It is proposed to examine this assertion in light of international human rights law in the context of the United Nations. This is because international human rights law derives its force from the UN Charter, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic Cultural and Social Rights and other covenants, declarations and resolutions by UN bodies. As such it is proposed to look at economic sanctions imposed by the Security Council¹.

The United Nations has a dual purpose: one to maintain and where necessary, restore international peace and security (Article 1.1) and the other, to promote and encourage respect for human rights and fundamental freedoms (Article 1.3). The Security Council is at the apex of the collective security system envisaged by the Charter, whereas the General Assembly is charged with “assisting in the realisation of human rights and fundamental freedoms for all”². This division of labour, along the lines of Article 1.1 and Article 1.3, belies the tension inherent in international human rights law. The struggle to harmonise this dual purpose serves as a context for the determination whether economic sanctions should be rethought entirely in light of the above documents.

It will be shown, against a backdrop of growing concern and evidence that economic sanctions do impair the enjoyment of human rights. The question then asked, does

¹ There are many types of sanctions ranging from diplomatic to military, as there are many states acting unilaterally or collectively, which impose them. The Charter allows states to “pursue pacific settlements of disputes” (Article 52), without Security Council authorisation, and the imposition of sanctions by a state against another is a facet of trade law. African states acted collectively against Burundi, whereas the US has comprehensive sanctions in place against Cuba. Humanitarian aid arrived, for the first time in forty years, in Cuba from the US in December 2000. The Sub Commission on Human Rights has urged states “to reconsider their adoption or support for such measures”, Res. 2000/25.

² United Nations Charter, Article 13. 1 (b).

this mean that they should be rethought entirely, which entails two propositions. First, that the design and application of economic sanctions should be rethought and second, that they should be rethought entirely. Both necessitate examining the extent to which the Security Council, given its function, should consider international human rights instruments when deciding to impose and/or maintain economic sanctions.

ECONOMIC SANCTIONS

Economic sanctions target trade and/or finance between the Members of the UN and a targeted country. Trade sanctions concern the import and export of goods, whereas financial sanctions include blocking government assets abroad and restricting loans and credits. There can be a substantial overlap between the two “since with their foreign assets frozen and access to new funds blocked, Governments will be unable to pay for imports”³. The object and purpose of sanctions imposed under Chapter VII of the UN Charter by the Security Council, is the maintenance of international peace and security. The theory is that pressure on the civilians of the targeted country will translate into pressure on the government for change. The Secretary General of the UN, Kofi Annan, observed that the objective of sanctions is to “change in specific ways the behaviour of a government or regime [. . .] and, in a conflict situation, to diminish the capacity of the protagonists to sustain a prolonged fight”⁴.

The Security Council can impose sanctions under Article 41⁵ once a threat to the peace, breach of the peace, or act of aggression has been determined in accordance with Article 39. They are an enforcement mechanism to compel states to comply with international law and, as imposed under Chapter VII of the Charter, are binding on

³ UN ECOSOC, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, ‘The Adverse Consequences of Economic Sanctions on the enjoyment of Human Rights’, by Marc Bossuyt, para. 13. This paper will be referred to as Bossuyt.

⁴ Secretary-General, ‘Reviews Lessons learned during ‘Sanctions Decade’ in remarks to International Peace Academy Seminar’, April 17, 2000, para. 3.

⁵ “The action adopted by the Council, once it has decided that there exists with regard to a situation a threat to the peace, breach of the peace or act of aggression, may fall into either of two categories. It may amount to the application of measures not involving the use of armed force under Article 41, such as the disruption of economic relations or the severance of diplomatic relations, or may call for the use of such force as may be necessary to maintain or restore international peace and security under Article 42”, Shaw, *International Law*, (Cambridge University Press, 1997, 4th Edition) p. 859.

Members⁶. Sanctions are an important weapon in the arsenal of the Security Council, “between mere verbal condemnation and recourse to armed force”⁷, but had a troubled birth and have an uneven track record.

Sanctions were only imposed by the Security Council⁸ twice before the end of the Cold War⁹, both in Africa and with the same subject matter - white minority rule. They were first imposed against Southern Rhodesia followed by South Africa¹⁰. Arguments were made that the Security Council did not have the authority to act so in light of the principle of non-intervention. It was claimed that the system of government of a state was purely a domestic matter and outside the reach of international law. This argument is now somewhat defunct given that sanctions “are now imposed with no consideration whatsoever of their legal status”¹¹. Moreover, there are numerous sanctions regimes in place around the world today¹².

There is mounting evidence that sanctions have a negative impact on human rights. The object and purpose of such measures is to maintain international peace and security, yet they appear to undermine the pledge, seen in the Charter and the Bill of Rights¹³, to promote and encourage respect for human rights. Thus economic

⁶ As the Security Council reminded Members when it imposed mandatory economic sanctions against Southern Rhodesia. Failure to implement would be a violation of Article 25 of the Charter.

⁷ Secretary-General, ‘Report of the Secretary-General on the Work of the Organisation’, 1999, para. 229.

⁸ Due to the composition and the procedures of the Security Council, coupled with prevailing geopolitics, the powers bestowed on the Security Council were rarely used before 1990. The composition and procedures, of what is essentially a political body, still impose restrictions on Security Council action under Chapter VII.

⁹ With the collapse of the USSR targeted states, such as Cuba, have lost potential trading partners, making sanctions more deeply felt.

¹⁰ South Africa and Southern Rhodesia posed a threat to international peace and security because they were surrounded by black states. This wide interpretation of Article 39 of the Charter was also applied to Rwanda and Somalia, where the possible effects of the conflicts crossing borders, was deemed a threat. The South Africa situation is noteworthy, for as Sohn points out “The Security Council joined the General Assembly in holding implicitly that human rights provisions of the Charter prevailed over the prohibition in Article 2. 7”, in Steiner and Alston, *International Human Rights in Context* (Oxford University Press, 1996, 1st Edition) p. 366.

¹¹ Bossuyt, *op. cite.* n.1 p.25

¹² Due to the number of sanctions regimes in place, whether imposed by the Security Council or states acting unilaterally or collectively and given Article 52 and state sovereignty, it is arguable that sanctions have become part of customary international law.

¹³ Preamble of UDHR, “Member states have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms”, ICCPR “the obligation of states under the Charter of the United Nations to promote universal respect for, and observance of human rights and freedoms”. The ICESCR is along the same lines.

sanctions are a microcosm of the struggle to harmonise Article 1.1 and Article 1.3. They are the battle ground for the ensuing conflict for the prominence of one over the other.

GROWING CONCERN

Mandatory economic sanctions were next imposed by the Security Council against Iraq in 1990, and thus began the 'sanctions decade'. From the mid - 1990's, when the then Secretary General, called sanctions a "blunt instrument", concern has been increasing about the negative impact of economic sanctions on human rights.

The Secretary-General, Kofi Annan, in his annual reports on the Work of the Organisation has devoted an exponentially increasing number of paragraphs to this concern since 1997. The President of the General Assembly in 1999 noted that human rights consideration must be the overriding factor when imposing and maintaining sanctions. This was mirrored a year earlier when the Committee on Economic, Social and Cultural Rights stated that the ICESCR must be complied with at all times, forcefully concluding, "one lawlessness must not be replaced by another"¹⁴. The Inter-Agency Standing Committee deplored the adverse impact of sanctions on civilians in targeted countries and offered assistance, in conjunction with the Emergency Relief Co-ordinator, to the Security Council to help alleviate such consequences¹⁵.

States also showed concern by instituting a project, initiated by Switzerland and Germany. The Interlaken Process aims to design more effective sanctions in that they will achieve the desired result by targeting those responsible for the international wrong, thereby reducing the negative impact on civilians. These are the so-called 'smart sanctions'¹⁶. Non-governmental organisations, such as Human Rights Watch have also warned the Security Council of the adverse effect of sanctions. In reference to the sanctions imposed against Iraq, Human Rights Watch urged the Council to take further steps to respond to the humanitarian situation¹⁷. Moreover, as an indication of the growing concern, academics have joined international bodies, states and NGO's in

¹⁴ Committee on Economic, Social and Cultural Rights, General Comment No. 8, E/C.12/1997/8.

¹⁵ Inter-Agency Standing Committee Humanitarian Impact of Sanctions, 29/12/97.

¹⁶ See, www.smartsanctions.de

voicing concern about the impact of sanctions on human rights. Steiner and Alston, in the 1996 edition of their book, *International Human Rights in Context*, do not even raise the possibility that sanctions have adverse consequences for human rights, whereas the 2000 edition devotes a section to the issue.

PROBLEMS WITH ASSESSING THE IMPACT

The focus of such concern and work are comprehensive trade sanctions as humanitarian crises have erupted in the targeted countries¹⁸. The most comprehensive and one of the longest running sanctions regime in place, is that against Iraq. It is noteworthy that concern began to mount from the mid-1990's when sanctions had been in place for a few years. Reports began to filter back to the international community about the negative impact sanctions were having on the civilian population of Iraq.

As Noel Dorr observed, such reports were subject to propaganda by the Iraqis and the international community¹⁹. UNICEF noted that the "barrage of unfiltered, quasi-scientific information gleaned from whatever source, using whatever methodology"²⁰ has left the objectivity of such reports in doubt and limits their effectiveness in influencing policy and change. The problem of obtaining reliable information is further exacerbated by the target state itself. For example, Iraq has refused to grant visas to experts being sent by the Secretary-General "to conduct a comprehensive report and analysis of the humanitarian situation"²¹.

It is also readily acknowledged that it is difficult to gauge the precise impact of sanctions, as the targeted state is usually already de-stabilised, as in the case of sanctions imposed against Rwanda and Somalia. This is particularly true with respect to Iraq as the Gulf War in 1991 resulted in the destruction of civilian infrastructure. Human Rights Watch noted that repair of this infrastructure had been impeded by the

¹⁷ Human Rights Watch, Letter to the Security Council, 4/01/00, para. 1.

¹⁸ Bossuyt, *op. cite.* n. 1 p. 6.

¹⁹ Noel Dorr, former Irish Ambassador to the UN, 'Perspectives on the Role of International Law', 22/11/01 at University College Cork.

²⁰ Hoskins, 'The Impact of Sanctions: A Study of UNICEF's Perspective', Office of Emergency Programmes, 1998, p. 8.

²¹ Human Rights Watch, Letter to His Excellency Saddam Hussein, 20/09/00.

comprehensive sanctions in place since 1991²². However, Iraq is also responsible for an authoritarian regime creates difficulties not only in determining the impact of sanctions but also by virtue of the fact that:

“those in power not only transfer the cost to the less privileged, but perversely often benefit from such sanctions by the ability to control and profit from black market activity, by controlling the distribution of the limited resources, and by exploiting them as a pretext for eliminating domestic sources of political opposition”²³

ASSESSING THE IMPACT

UNICEF’s Eric Hoskins²⁴ derived a method for assessing the impact of sanctions from universally accepted, legally binding international human rights law. He formulated this method with the above limitations, reliability of information and other reasons for hardship, in mind. He identified thirteen human rights, noted the relevant UN documents and equated these to humanitarian indicators. Such indicators are used to assess the level of respect for human rights and to measure society’s well being. Thus, the right to life as found in Article 3 of the UDHR and Article 6 of the ICCPR, was equated to mortality rates, whereas the right to education was twinned with conditions and capacity of schools, teacher / pupil ratio, drop rates and others. An analysis of the impact of sanctions in Iraq by Richard Garfield concluded, “at least 100,000 (and probably as many as 227, 000) children under five have died between 1991-1998 as a result of the Gulf War and sanctions”²⁵. He further remarked, when teachers in state run schools do turn up, they teach “listless, malnourished children, often without benefit of books, desks or even blackboards”²⁶.

Hoskins also identified the right to liberty and security of person²⁷. One humanitarian indicator of trends in violence and imprisonment is clearly shown in the increasing

²² Human Rights Watch, Letter to the Security Council, 4/01/00, para. 2.

²³ Secretary-General, ‘Report of the Secretary-General on the Work of the Organisation’, 1999, para. 231.

²⁴ Eric Hoskins, MD, Consultant. The views expressed in the paper are his own.

²⁵ Garfield, ‘When Sanctions Don’t Work’, The Economist, April 8-14, 2000, para. 13. Richard Garfield is a public health expert at Columbia University, who compiled his analysis from NGO surveys.

²⁶ *Ibid*, para.11.

²⁷ UDHR, Article 3, and ICCPR, Article 9.

crime rate. He also identified the right to participate in government²⁸ and the right to freedom of opinion and expression²⁹ and equated them, *inter alia*, to the nature of government and democracy and degree of freedom of mass media, respectively. As noted, the theory behind sanctions and the imposition of sanctions is that pressure on civilians will translate into pressure on the government. In an authoritarian regime such as Iraq, this theory is disproved. Both the rights to participate in government and freedom of expression are curtailed as sanctions are exploited as a pretext to eliminate political opposition³⁰. Moreover, even in a democratic society, civilians do not have input into certain political or military decisions³¹.

In addition to the curtailment of UDHR rights, rights under the ICCPR and the ICESCR are also impaired by the imposition of sanctions against Iraq. For example, taking the rising number of divorces and single parent families in Iraq as a humanitarian indicator it is clear that the duty to protect and assist the family is wanton³². Another humanitarian indicator, indicating the respect for Article 10.2 of the ICESCR concerning protection of mothers during and after childbirth, would be the rate of infant mortality and as noted this is particularly high in Iraq. The Convention on the Elimination of all Forms of Discrimination against Women, 1979, (CEDAW) not mentioned by Hoskins, is another relevant document as research shows that “sanctions have an overwhelmingly greater negative medical and social impact on women”³³. Article 6 of the CEDAW concerns the traffic, exploitation and prostitution of women. The protection against such activities could be measured against the level of prostitution, as a humanitarian indicator, though it is somewhat ironic that Iraq has criminalised prostitution with the death penalty.

Hoskins has proposed a method for assessing sanctions whilst acknowledging that sanctions are imposed for valid reasons. This suggests a proportionality approach

²⁸ UDHR, Article 21 and ICCPR, Article 25.

²⁹ UDHR, Article 19, ICCPR, Article 19 and Convention on the Rights of the Child, Article 13.

³⁰ Secretary-General, ‘Report of the Secretary-General on the Work of the Organisation’, 1999, para. 231.

³¹ Gordon, ‘A Peaceful, Silent, Deadly Remedy: The Ethics of Economic Sanctions’ 13 *Ethics and Int. Affairs* 123 (1999), in Steiner and Alston, *International Human Rights in Context* (Oxford University Press, 2000, 2nd Edition) p. 666 at p. 668

³² ICCPR, Article 23 - protection of the family. ICESCR, Article 10 - protection and assistance to the family.

³³ Bossuyt, *op. cite.* n. 1 p. 17.

akin to that utilised by the European Court of Human Rights to determine whether there has been an unjustified interference with protected rights. A kind of proportionality is recognised by the ICESCR³⁴, yet there are non-derogable rights, one of which, and arguably the most important, is the right to life³⁵.

Applying a proportionality test between the objective of sanctions (Article 1.1 of the Charter) and the need to promote and encourage respect for human rights (Article 1.3 of the Charter) has been derided by commentators. Gordon takes a Kantian approach and asserts that people are not a means to an end³⁶. Lopez, in response, stated that a responsibility towards all children to ensure that they are not gassed by Iraq's weapons of mass destruction exists, which is at least equivalent "to the obligation that we take all necessary steps to ensure life for Iraqi children"³⁷. And as Bossuyt noted, the US Ambassador to the UN remarked that the half million deaths in Iraq were worth the price³⁸.

When the effectiveness³⁹ of sanctions in achieving the desired result is in doubt, particularly when imposed against an authoritarian government, any kind of interference with human rights cannot be justified. This is an aspect of the six-prong test enunciated by Bossuyt.

1. Are sanctions imposed for a valid reason?
2. Do sanctions target the proper parties?
3. Do sanctions target the proper goods or objects?
4. Are sanctions reasonably time-limited?
5. Are sanctions effective?
6. Are sanctions free from protest arising from violations of the 'principles of humanity and the dictates of the public conscience?

³⁴ See ICESCR, Articles 4 and 3

³⁵ The only absolute right is freedom from torture, cruel, inhuman or degrading treatment or punishment, found in UDHR, Article 5 and ICCPR, Article 7.

³⁶ Gordon, *op. cite.* n. 31 p. 666

³⁷ Lopez, 'More Ethical than Not: Sanctions as Surgical Tools' 13 *Ethics and Int. Affairs* 143 (1999) in Steiner and Alston, *op. cite.* n.31 p. 670

³⁸ Bossuyt, *op. cite.* p. 19.

³⁹ "An influential study argues that of 116 cases of sanctions imposed between 1914 and 1990, between a quarter and a third resulted in some policy change in the targeted country. The likelihood of 'success', concluded the authors, decreases as the goals become more general and 'ambitious'", Paul and Akhtar, 'Sanctions: An Analysis', *Global Policy Forum*, Aug. 1998, para. 19.

In contrast to Hoskins' method, this test was derived from human rights, humanitarian and international law as Bossuyt wished to promote "international law and, international solidarity and, most importantly, the interests of the civilian population"⁴⁰. Moreover, Bossuyt's test can be applied at any time to evaluate proposed or existing sanctions.

Bossuyt applies this test to the humanitarian crisis in Iraq and concludes that the sanctions regime in place is "unequivocally illegal under existing international humanitarian law and human rights law"⁴¹. He even notes that some consider the deaths caused by the sanctions as equating to genocide. The proportionality approach⁴² to balancing the dual purpose of the UN advocated by Hoskins, was rejected by Bossuyt when he asserted that the objective of the sanction regime, that of the security of the region, is irrelevant to the deliberate physical destruction caused by the regime⁴³.

It is quite clear that sanctions do impact on human rights as "all non-essential supplies are prohibited, resulting in shortages of many civilian related items [. . .] restricted access to foreign markets contributed to economic depression"⁴⁴. But should sanctions be rethought entirely?

PURPOSED REMEDIES: HUMANITARIAN EXEMPTIONS AND SMART SANCTIONS

Both Hoskins and Bossuyt mention the two avenues supported by the Secretary-General to improve sanctions, that of selective targeting or incorporation of

⁴⁰ Bossuyt, *op. cite. n. 1* p. 4.

⁴¹ *Ibid*, p. 18.

⁴² "The traditional calculation of balancing civilian suffering against the desired political effects is giving way to the realisation that the efficacy of a sanctions regime is in inverse proportion to its impact on civilians", Bossuyt, *op. cite. n. 1* p. 13. And "[E]xperts have increasingly recognised this negative side of sanctions and questioned whether human suffering can be justified by the original purpose", Paul and Akhtar, *op. cite. n. 39 para. 4*.

⁴³ Bossuyt, *op. cite. p. 18.*

⁴⁴ Hoskins, *op. cite. n. 20 p.6*.

exceptions in Security Council resolutions⁴⁵. In other words, smart sanctions and humanitarian exemptions.

Hoskins offers recommendations and a set of Sanctions Principles to compliment his proposed assessment method. More specifically, he advocates a 'Child Impact Assessment' at the point at which sanctions are applied, and constant monitoring thereafter to gauge the humanitarian impact⁴⁶. The recommendations and principles are an amalgamation of humanitarian exemptions and smart sanctions, intended to mitigate civilian suffering. One such recommendation is that a generic list of humanitarian exemptions be drawn up to apply to all targeted states and, in the interim, Sanctions Committees⁴⁷ should be reformed to speed up approval for exemptions as "[d]espite these safeguards [. . .] the negative effect of sanctions upon civilians [. . .] remains widespread"⁴⁸. As a Sanctions Principle Hoskins stated that when possible sanctions should be directed against those whose behaviour the international community wishes to change⁴⁹. Bossuyt unequivocally dismisses humanitarian exemptions and likens them to trying to patch a sunken ship. In consequence, sanctions should be rethought entirely as exemptions "can in no way fully compensate for the damage done [in Iraq]"⁵⁰.

Smart sanctions, on the other hand, target those responsible for the international wrong and so aim to alleviate the suffering of the civilian population, thereby ensuring the compliance of sanction regimes to human rights, humanitarian law and increasing the chances of success. The Secretary-General has welcomed smart sanctions and has urged the Security Council to bear them in mind⁵¹.

⁴⁵ Secretary-General, 'Report of the Secretary-General on the Work of the Organisation' 1999, para. 124.

⁴⁶ Hoskins, *op. cite.* n. 20 p. 4 (no. 4).

⁴⁷ Sanctions Committees were established pursuant to Security Council resolutions with the responsibility of monitoring the implementation of sanctions in specific countries; thus, there is one for Iraq, Angola etc. - eleven in all. However, "they operate secretly and cannot be monitored and made accountable to the public. This makes the on-going sanctions process highly politicised and very open to pressure from Permanent Members. Sanctions may begin with one justification and continue with others" Paul and Akhtar, *op. cite.* n. 39. Hoskins also recommended that humanitarian monitors similar to the current human rights monitors.

⁴⁸ Hoskins, *op. cite.* n. 20 p. 6.

⁴⁹ *Ibid.*, p. 4 (no.2).

⁵⁰ Bossuyt, *op. cite.* n. 1 p. 14.

⁵¹ Secretary-general, 'Report of the Secretary -General on the Work of the Organisation' 1999, para. 233.

Despite Bossuyt's renunciation of exemptions, his test does contain elements of exemptions and smart sanctions. Targeting proper goods and objects is an aspect of exemptions and targeting the proper parties incorporates aspects of smart sanctions. As for Bossuyt's views on smart sanctions, he asserts an application of his test could ensure the effectiveness of a sanctions regime while not harming the civilian population, as it provides for proper targeting, clearly defined goals, a definitive exit clause and regional unanimity⁵².

The differences between the two proposed methods of assessment and recommendations thereto are stark. Hoskins examined ways in which the "international community can reduce the damaging humanitarian effects of sanctions"⁵³, and saw the imposition of sanctions as valid and appropriate in certain cases⁵⁴. Bossuyt hoped to provide a "framework for incorporating the human rights and humanitarian law dimension of sanctions"⁵⁵ and lamented that the question of legality had been peripheral to international dialogue on sanctions⁵⁶. Therefore, Hoskins saw sanctions from the eyes of the targeted, focusing on reducing harm, whilst Bossuyt saw sanctions from the eyes of those who target, focusing on their obligations and duties.

There is consensus that the use of economic sanctions should be rethought in light of international human rights law and the international community has clearly demanded this. Should the design and application be rethought or should sanctions and their use be rethought entirely? Which option will the Security Council choose, humanitarian exemptions or smart sanctions, if at all? Or will it move to rethink entirely the economic sanctions option?

⁵² Bossuyt, *op. cite.* n.1 p. 15.

⁵³ Hoskins, *op. cite.* n 20 p. 5.

⁵⁴ *Ibid*, p. 2.

⁵⁵ Bossuyt, *op. cite.* n. 20 p. 5.

⁵⁶ *Ibid*, p. 24.

THE WAY FORWARD

The future of sanctions and of those adversely effected depends of the response of the Security Council. It has affirmed “the need for respect for human rights”⁵⁷ and has pledged to “give special attention to [the] likely effectiveness [of sanctions] in achieving clearly defined objectives, while avoiding negative humanitarian consequences as much as possible”⁵⁸. These statements are not unusual. Resolution 661 began the comprehensive sanctions against Iraq, but Resolution 687 recognised the need to protect the Kurdish population in Iraq. Moreover, the Security Council has acted under Chapter VII to protect human rights by way of ‘humanitarian intervention’.

However, the Council is “averse to adopting blanket humanitarian exemptions when imposing sanctions”⁵⁹ and has not fully answered the call to improve procedures for exemptions granted by the Sanctions Committees, though it is beginning to ask for humanitarian assessments before imposing sanctions. As regards smart sanctions, the 1999 Presidential Statement of the Security Council noted targeted sanctions and the Council even passed a resolution in 1997 that aimed to restrict the travel of Iraqi officials. It was never imposed but it was believed to have had a powerful psychological effect⁶⁰.

Even so, it is unclear what ‘special attention’ human rights will be given in Security Council debates on sanctions⁶¹. This is unsurprising given the function of the Council⁶². It was designed to “maintain or restore international peace and security, not to enforce law”⁶³. It is fair to say that the Security Council will probably take the smart sanctions route, not only to reduce the negative humanitarian consequences, but also, and perhaps more importantly given its function, because of the increased chance of success. This line, if taken, adopts the proportionality approach advocated

⁵⁷ President of the Security Council, ‘Role of the Security Council in the Prevention of Armed Conflict’ 30/11/99, S/PRSI/1999/34, para. 1.

⁵⁸ *Ibid*, para. 9.

⁵⁹ Paul and Akhtar, *op. cite.* n.39 para. 56.

⁶⁰ *Ibid*, para. 33.

⁶¹ Due to the secretive nature of Sanctions Committees, it is also unsure how much balancing there is between the objectives and impacts of sanctions.

⁶² According to the UN website the Security Council has ten functions, including the maintenance of international peace and security. There is no mention of human rights.

⁶³ Henkin, *International Law: Politics and Values*, (1995, 1st Edition), p. 46

by Hoskins and presumes the legality or compliance of sanctions with prevailing human rights law. Economic sanctions, as the battleground for prominence between Article 1.1 and Article 1.3 of the Charter, will survive and ensure the reign of international peace and security.

CONCLUDING REMARKS

Adopting smart sanctions may not mean compliance with international human rights law. As Bossuyt noted such regimes could be effective while not causing adverse humanitarian consequences, and it is hoped that smart sanctions would comply with human rights law. Smart sanctions have never been tested and in light of Hoskins statement, derived from experience, that “the vulnerable can never be fully protected from the harmful effects of sanctions”⁶⁴, is adopting smart sanctions enough?

Bossuyt aimed to find limitations on the use of economic sanctions and propounded a test that evaluated sanctions in light of the operation of general international law. The sanctions against Iraq are contrary to at least four elements of Bossuyt’s test. The sanctions must be imposed for a valid reason - in light of recent developments in respect of weapons inspectors, are the sanctions valid? They must target the proper parties - glaringly clear that the civilian population suffers. The ban on ‘dual purpose’ goods⁶⁵, the oil for food programme and the procedures of the Sanctions Committee place doubt on whether the sanctions are targeting the proper goods or objects. Moreover, as two Humanitarian Co-ordinators⁶⁶ for Iraq resigned in protest within months of each other, they can hardly be said to satisfy Bossuyt’s sixth element.

There is also an argument to be made against the success story of sanctions, South Africa⁶⁷, upon an application of Bossuyt’s test. When sanctions were imposed against Southern Rhodesia such was the UK’s enthusiasm for the fledging enforcement mechanism that it asked the Security Council, with backing from the US, permission

⁶⁴ Hoskins, *op. cite.* n. 20 p. 4.

⁶⁵ If dual-purpose goods do not qualify as an exemption under a sanctions regime such as in Iraq, it could be argued, quite perversely granted, that the dual purpose of the UN means that economic sanctions do not qualify as an enforcement mechanism.

⁶⁶ Denis Halliday and Hans von Sponeck

⁶⁷ “Many have suggested that the end of apartheid was due to internal political movements as much as to international sanctions”, Gordon, ‘Sanctions as Siege Warfare’ *The Nation*, 22/03/99, para. 22.

to block oil tankers destined for Southern Rhodesia. However, when the Council proposed to impose sanctions against South Africa, for ostensibly the same reasons, they were initially blocked by both these states. Sanctions, according to Bossuyt's test, must not be imposed for political or arise from an economic benefit for states. As a general point, applicable to both South Africa and Iraq, sanctions must not result in undue interference with state sovereignty. How does this rest with Kofi-Annan's description of the purpose of sanctions "in order to change a system of government"⁶⁸? It further illustrates Bossuyt's concern that the question of legality is a peripheral matter in respect of sanctions.

Bossuyt's test aside there is another argument that adopting smart sanctions will not ensure compliance with human rights. Article 1.1 and Article 1.3 are closely related. As Articles 55 and 56 note there is a direct link between "peaceful and friendly relations among nations"⁶⁹ and ensuring promotion, respect for and observance of human rights. This was recognised by the Security Council when it called upon UN bodies to do all that they can to eradicate the "root causes of armed conflict", identified as "economic, social, cultural and humanitarian problems"⁷⁰. It is ironic that the Security Council called upon others to remove the potential threat of armed conflict. This connection reinforces the assertion that the international community, which necessarily includes the Security Council, has an obligation to the targeted state to ensure the protection of the core content of the right affected⁷¹ as well as abide by the Principles and Purposes of the UN.

However, the Security Council "has a long history of refusing to consider itself as an organ for the promotion or respect for human rights"⁷², thereby exemplifying the institutional division of labour between the Council and the General Assembly. Given the Council's cautious response to smart sanctions it is unlikely that history

⁶⁸ Secretary-General, 'Report of the Secretary-General on the Work of the Organisation' 1999, para. 3.

⁶⁹ UN Charter, Article 55.

⁷⁰ President of the Security Council, *op. cite.* n. 57 para. 2.

⁷¹ Committee on Economic, Social and Cultural Rights, *op. cite.* n.14. There are additional problems with authoritarian regimes such as Iraq, and ensuring that they comply with their international human rights obligations. As noted, of their nature, such regimes affect the right to participate in government and the freedom of opinion and expression.

⁷² Steiner and Alston, *op. cite.* n. 10 p. 355.

will change and so sanctions will remain a source of discomfort for the UN due to its “longstanding commitment to alleviating poverty rather than causing it”⁷³.

⁷³ Gordon, ‘Sanctions as Siege warfare’ The Nation, 22/03/99, para. 4