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RESEARCH ARTICLE

A CRITICAL EVALUATION OF THE EFFECTIVENESS OF SANCTIONS IN THE PROMOTION OF HUMAN RIGHTS

^{1,*}Viraj Fulena and ²Hemant B. Chittoo

¹Lecturer in Law at the University of Technology, Mauritius

²Professor in Public Policy and Management at the University of Technology, Mauritius

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*Corresponding Author:
Viraj Fulena

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ABSTRACT

Economic sanctions have become the main tool for policymakers to tackle geopolitical challenges such as terrorism and conflict. Sanctions can be in the form of travel bans, asset freezes, arms embargoes, and trade restrictions. Critics often perceive sanctions as being poorly conducted and rarely successful, this could be portrayed as one of the major downfalls on International Law. On the other hand, supporters would argue that recent conflicts have been contained with effective economic sanctions and that it remains an essential foreign policy tool. This paper examines what constitutes sanctions and focuses on practical instances where they have been used in the promotion of Human Rights. It will also examine the alternatives available to economic sanctions since the imposition of such measures could have detrimental effects on human beings and their basic needs.

INTRODUCTION

"Every human relationship is some mixture of coercion and cooperation."¹ On any particular issue, people tend to agree or disagree. When there is agreement, there is cooperation. In the absence of an agreement, disagreement sometimes leads to negotiation and when negotiation fails, coercive measures are used. Similarly, on the international level, relations between States are similar to those between people on a social level. When State interests are not the same, and negotiations fail, States will perform a cost-benefits analysis and may decide to use coercive measures to achieve their objectives.² Historically, before the creation of international organizations like the United Nations and many others, the basic tool for international coercion was warfare. However, in Justin Stalls' opinion, "the sheer horror of violence, the memory of both World Wars, and the fear of atomic annihilation have led many States to limit violent conflict in the latter half of the twentieth century."³ This clearly explains the coming into existence of many international organisations such as the United Nations and others in order to

improve diplomatic relationships, communication and negotiation among the different actors on the international plane. However, when diplomacy fails, the basic necessity for coercion between States still exists.⁴ Thus, many nations have opted to use non-violent forms of coercion in order to meet the said necessity.

Economic Sanctions: Economic sanctions have become important instruments in the arsenal of international actions taken against deviant governments. In situations where diplomatic conciliation fails, but where military action is not quite justified, sanctions are often considered as the optimal tool.⁵ Governments and multinational bodies impose economic sanctions to try to alter the strategic decisions of state and non-state actors that threaten their interests or violate international norms of behavior.⁶ Economic sanctions are also considered as a non-violent form of coercion that replaces military intervention. During the Cold War, the high costs involved in the war between the former United Soviet Socialist Republic and the United

¹ Tom J. Farer, 'Political and Economic Coercion in Contemporary International Law' [1985] AM. J. INT'L L. 405, 406

² Justin D. Stalls, 'Economic Sanctions' [2003] U. MIAMI INT'L & COMP. L. REV, 115

³ Ibid at 116

⁴ Tom J. Farer, 'Political and Economic Coercion in Contemporary International Law' [1985] AM. J. INT'L L. 405, 413

⁵ Gary Clyde Hufbauer, Economic Sanctions Reconsidered (Peterson Institute for International Economics 2007)

⁶ J Masters, 'What Are Economic Sanctions?' (2017) <<http://www.cfr.org/sanctions/economic-sanctions/p36259>> accessed 2 May 2017

States pushed the United States to use economic sanctions rather than military action to manage the conflict.⁷ And up till now, the United has continued to expand its use of economic sanctions. In a congress over the concerns about apartheid in South Africa Senator Kennedy stated, “*There comes a time in the life of a country when it must live up to the principles that made that country special and different in the world and in history.*”⁸

He was of course referring to the fact that the Americans are the vanguards of equality and justice in the free world, human rights considerations have become a major tenet of United States foreign policy.⁹ As the current world leader in the use of economic sanctions, the actions of the United States exemplify the expansive modern use of these sanctions as a nonviolent form of coercion motivated by a desire to avoid military conflict.¹⁰ Economic sanctions can be characterised as follows: “(a) restrictions on the flow of goods, (b) restrictions on the flow of services, (c) restrictions on the flow of money and (d) control of markets themselves in order to reduce or nullify the target’s chances of gaining access to them.”¹¹ Cultural sanctions are another type of measure directed at the general population. These may include restrictions on participation in sporting events with teams of the target nation, on scientific exchanges or on travel to the target nation.¹²

Security Council Practice on Sanctions: Article 41 of the United Nations Charter lists “*economic relations, transport, communications, and diplomatic relations as possible areas of application for sanctions.*” Those non-military sanctions instruments may also be extended to sport and cultural relations. Article 41 also stipulates for measures to try war crimes, genocide, crimes against humanity, example would be the tribunals set up for former Yugoslavia in The Hague and for Rwanda in Arusha. The development of space technology and computer technology will probably generate further variants as specified by scholars.¹³

Sanctions in the UN Charter System: The legal bases for UN sanctions are contained in Chapter VII of the UN Charter. The precondition for the imposition of sanctions requires a threat to the peace, breach of the peace, or an act of aggression. According to Articles 39, 41, and 42 of the UN Charter, the council can then opt for whatever coercive measures of a non-military or military kind it considers necessary to preserve world peace and international security.¹⁴ The Security Council may only take military actions if it believes ‘*that measures provided for in Article 41 would be inadequate or have proved to be inadequate*’ (Article 42). If the council decides to apply sanctions, all member states must, in accordance with Articles 25 and 48 of the Charter, “*regard such a decision as immediately binding in law and strictly implementable.*” The Security Council regularly appoints sanctions committees as auxiliary bodies made up of representatives of all the members of the council, and their job is to interpret and administer the sanctions regime.¹⁵

European Union Sanctions: As part of its Common Foreign and Security Policy the European Union also imposes sanctions known more commonly in the twenty-eight-member bloc as restrictive measures. As the EU lacks a joint military force, many European

leaders consider sanctions the bloc’s most powerful foreign policy tool. Sanctions policies must receive unanimous consent from all the member states in the Council of the European Union, the body that represents EU leaders.¹⁶ Since the beginning of the EU in 1992, the latter has levied sanctions more than thirty times (in addition to those mandated by the UN). According to Analysts, a turning point for the bloc would be the comprehensive sanctions imposed on Iran in 2012, which had previously sought to limit sanctions to specific individuals or companies. Individual states may impose harsher, autonomous sanctions within their national jurisdiction.¹⁷

Human Rights: After looking briefly at what constitutes sanctions, the second part of this essay will focus on the definition of Human rights and also what are the practical examples where sanctions have been used in the promotion of human rights. Every individual possesses rights in line with the norms and obligations of international law outlined in the UN Charter, and several multilateral human rights instruments (the Universal Declaration of Human Rights (1948), International Covenant on Civil and Political Rights (ICCPR) (1966), and International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966)—what is also known as Universal Bill of Human Rights.¹⁸ While human rights obligations contained in the Universal Declaration of Human Rights and the UN Charter is disputed, the ICCPR and ICESCR are binding multilateral human rights treaties creating legal norms and obligations for international community and member states.¹⁹

Both covenants, among many others, proclaim “*rights to self-determination, free disposition of natural wealth, and non-deprivation of means of sustenance.*” The ICCPR among many others secures “*right to life, right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment, rights to liberty and security of persons.*”²⁰

The ICESCR on the other hand guarantees equal rights of men and women, right to work, social security, adequate standards of living “*including adequate food, clothing and housing, and to the continuous improvement of living conditions,*” enjoyment of highest attainable standard of physical and mental health, and right of education.²¹ In addition to treaty law, legal scholars view legally binding nature of human rights law arising from norms of customary international law and general principles of law as recognized by civilized nations. Moreover, certain rights, such as torture, slavery, and others rise to the level of peremptory norm *jus cogens*, from which derogation by governments is allowed under any circumstances, even during times of war or any other public emergencies.²²

Practical examples of the use of sanctions to promote Human Rights

Myanmar: The Rohingya people, a Muslim minority group residing in the Rakhine state have been persecuted by the Myanmar government for many years. The government has refused to recognize them as an ethnic group of the country and the Rohingya group lack legal protection and were victims of many atrocities and human rights violations. Most of them chose to flee from Myanmar because of restrictions and policies such as “marriage, family planning, employment, education, religious choice, and freedom of movement”²³ were imposed on them.

⁷Miroslav Nincic and Peter Wallensteen, *Dilemmas Of Economic Coercion* (1st edn, Praeger 1983).

⁸ JONATHAN FUERBRINGER, 'CONGRESS; High Anxiety Over South Africa' (Newspaper 1985) <<http://www.nytimes.com/1985/09/13/us/congress-high-anxiety-over-south-africa.html>> accessed 3 May 2017

⁹ Vogelgesang, 'What Price Principle? U.S. Policy On Human Rights' [1978] FOREIGN AFF. 56, 819

¹⁰ Justin D. Stalls, 'Economic Sanctions' [2003] U. MIAMI INT'L & COMP. L. REV. 115

¹¹Miroslav Nincic and Peter Wallensteen, *Dilemmas Of Economic Coercion* (1st edn, Praeger 1983).

¹²M Doxey, 'Economic Sanctions and International Enforcement' [1980], 10-11

¹³ Manfred Kulesa, "'Peace Through Sanctions?' (Global Policy Forum 1998) <<https://www.globalpolicy.org/global-taxes/42345.html>> accessed 3 May 2017

¹⁴ ibid

¹⁵ ibid

¹⁶J Masters, 'What Are Economic Sanctions?' (2017) <<http://www.cfr.org/sanctions/economic-sanctions/p36259>> accessed 2 May 2017

¹⁷ ibid

¹⁸ ELLA SHAGABUTDINOVA and JEFFREY BEREJIKIAN, 'Deploying Sanctions while Protecting Human Rights: Are Humanitarian “Smart” Sanctions Effective?' [2007] JHR 59, 61

¹⁹ ibid

²⁰ ibid

²¹ ibid

²² ibid

²³Miroslav Nincic and Peter Wallensteen, *Dilemmas Of Economic Coercion*

In 1990, the EU imposed an Arms embargo and subsequently a trade, economic and individual sanctions against Myanmar/Burma. However, in 2013, the EU lifted the trade, economic and individual sanctions but the EU foreign ministers in a meeting stated that the arms embargo would stay in place. The decision came in response to political reforms implemented by President Thein Sein, who came to power after elections in November 2010. His administration has freed many political prisoners and relaxed censorship.²⁴ Human rights groups say the lifting of sanctions reduces the leverage the EU has on Burma, with Human Rights Watch's Asia head Phil Robertson describing the move as "premature and regrettable."²⁵

Zimbabwe: In 2002, the EU and the UN imposed sanctions on Zimbabwe for electoral fraud, on assumed and proven involvement in the illicit trade of high value commodities including diamonds and human rights abuses under the watch of President Robert Mugabe.²⁶ The EU has renewed the listings of the 7 people and 1 entity targeted by its Zimbabwe sanctions for a further year, until 20 February 2018. Currently the sanctions are suspended in respect of all listed people and entities except for Robert Mugabe, Grace Mugabe, and Zimbabwe Defence Industries. It has also introduced an exception to its arms embargo on Zimbabwe, allowing for the export of certain explosive substances where they are solely for use in Zimbabwe's civilian mining and infrastructure projects.²⁷

Other Examples: The most recent economic sanctions were imposed on Russia by the US and the European Union. The sanctions targeted Russia's state finances, energy and arms sectors which are mostly controlled by the inner circle of President Putin on Russia's alleged proxy war in Ukraine.²⁸ The longest running examples of economic sanctions are Cuba, North Korea and Iran. North Korea is considered as the most economically and politically isolated country in the world after signing the armistice which halted the Korean War in 1953. In 1979 after the Islamic revolution in Iraq, the United States imposed sanctions on Iran and in 1984 the US altogether broke off diplomatic relations due to a hostage crisis which ensued that year between the two nations. Cuba was also hit with sanctions by the US and they have been operational for about 53 years. Syria and Sudan just to name a few are the other countries that have been sanctioned by the United States.²⁹

Human Cost of Sanctions: The relationship between human rights and economic sanctions is fraught with tension. The United States is considered as the most frequent user of international economic sanctions in the world. U.S. sanctions programs often involve broad prohibitions against trade and financial transactions between persons subject to U.S. jurisdiction and particular target states or their nationals. Such programs when implemented effectively can have a dramatic impact on the basic human rights of subsistence and security. The human cost of sanctions, even those mobilized for legitimate reasons, is therefore a cause for genuine concern.³⁰ To illustrate the human costs of imposing sanctions, the examples of Iraq and Serbia will be taken.

Iraq: The U.N. initially imposed sanctions against those in Iraq on August 6, 1990, following the Iraqi military's invasion and illegal occupation of Kuwait. The U.N. sanctions restricted the importation

of products originating in Iraq and the exportation of all products to Iraq, except those used for humanitarian purposes. Also, the U.N. prohibited the remittance of any funds to Iraq, except funds for humanitarian purposes.³¹ The combination of the Gulf War and sanctions caused infant mortality rates to triple³² and standard of living have fallen by one-third in Iraq.

Serbia: The U.N. adopted sanctions targeting Serbia's population on May 30, 1992, in response to Serbian military violence throughout Bosnia-Herzegovina.⁴⁵ These sanctions forbade the importation and exportation of products from or to Serbia, except for supplies intended for humanitarian purposes." The sanctions also prohibited the provision of funds to Serbia, except payments made for humanitarian purposes.³³ The impact on Serbia was terrible, the economy has collapsed as a result of the war and sanctions and "a major public health catastrophe is unfolding. Inflation in Serbia was approaching 25,000% near the end of December 1993 and the monthly income of the average Serb had dropped from five hundred dollars to fifteen dollars.³⁴

Conclusion and Recommendations: The situation in both Iraq and Serbia is a clear indication that sanctions imposed against the entire population of a nation are intended to affect the whole population detrimentally. It is true that before investigating what effect sanctions may have had on the people within these nations, the difficulties of such an analysis must be acknowledged. There exists no exact method for measuring precisely what damage was caused by sanctions as opposed to other forces; or for measuring exactly how much of a problem is attributable to sanctions alone; or to sanctions combined with other forces.³⁵ It is obviously difficult to completely eradicate the use of sanctions but at least it is possible to design sanctions to minimize their impact. The UN took concrete steps to ease the plight of Iraqi citizens by introducing the oil-for-food program, which allowed Iraq to sell oil and use the proceeds to buy food and medicine. But the situation remains extremely bad in Iraq, to a great extent because Saddam Hussein did not spend the money on the humanitarian needs of his people.³⁶ Basic human needs such as food, medicines and other materials should always be exempted from sanctions, where the sanctions are related to human rights violations as provided in the Federal law. Similarly, there should be no restrictions on the exchange of information and ideas. Instead, smart sanctions, like those imposed on Serbia that froze the foreign bank accounts of government officials and their cronies and banned them from traveling to European Union countries and the United States should be favored.³⁷

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²⁶Maya Lester & Michael O'Kane, 'European Sanctions' (2005) <<https://europeansanctions.com/eu-sanctions-in-force/burma/>> accessed 3 May 2017

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³² Alberto Ascherio, 'Effect of the Gulf War on Infant and Child Mortality in Iraq' [1992] NEW ENG. J. MED 327, 931

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