

Economic Sanctions as Human Rights Violations: Reconciling Political and Public Health Imperatives

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ABSTRACT

The impact of economic sanctions on civilians has frequently been studied by public health specialists and specialized agencies of the United Nations (UN). This commentary explores some of the difficulties of the claim that sanctions constitute violations of human rights.

The deprivation suffered by civilian populations under sanctions regimes often are violations of economic, social, and cultural human rights; however, the attribution of responsibility for those violations to the "senders" of sanctions (the UN Security Council or the US government, for example) is difficult to sustain, particularly in light of the efforts made by these entities to provide for humanitarian exemptions and humanitarian aid.

A more productive approach to avoiding civilian harm is to prefer, as a matter of policy, arms embargoes, severing of communications, and international criminal prosecutions over trade embargoes. Promising recommendations have been formulated regarding "smart sanctions," which target regimes rather than people, and "positive sanctions" in the form of incentives. Health and human rights professionals have specific and important tasks in implementing such a restructured approach to sanctions. (*Am J Public Health*. 1999; 89:1509-1513)

In this commentary I consider the public health impacts of sanctions regimes in their political and legal context and examine several reform proposals designed to reduce their harmful effects on civilians. The article by Elizabeth Gibbons and Richard Garfield in this issue of the *Journal* provides an excellent example of the collection and presentation of data in support of their conclusion that economic sanctions in Haiti resulted in extensive violations of the rights of Haitian citizens.¹ My purpose is to raise some of the legal and moral problems of treating the civil impacts of sanctions as human rights violations and to urge a collaborative effort of public health and human rights professionals with policymakers to influence the way sanctions are applied.

The Legal and Political Framework of Sanctions

Sanctions in international law and politics are measures of coercion to induce a recalcitrant party to conform to a norm of international behavior or to the will of the "sending" authority. Technically, the term applies to both military and nonmilitary measures, although it is more commonly used for measures short of force. In the United States, the term is used for the wide range of laws that deny aid and trade preferences, prohibit the export and import of weapons and goods, freeze assets abroad belonging to targeted countries or their elites, and apply other measures explicitly taken for purposes ranging from surrendering for trial persons accused of participating in acts of terrorism (e.g., Libya) to changing a country's basic political and economic system (e.g., Cuba).

According to an international finance and trade advising firm, as of July 1999 the United States was imposing sanctions on no fewer than 28 countries.² From World War I to 1990, the United States is reported to have imposed sanctions 77 times.³ In the case of Libya, the Security Council suspended sanctions on April 5, 1999, when Libya surrendered for trial in the Hague the 2 suspects in the downing of PanAm Flight 103, renounced terrorism, and promised to compensate victims if the suspects are found guilty.⁴ In contrast, sanctions applied to Cuba since 1960 have not achieved their purpose of destabiliz-

ing the Castro regime and provoking its overthrow and have been overwhelmingly rejected by the United Nations (UN) General Assembly, which "call[ed] on all States to refrain from promulgating and applying laws and measures" like the economic, commercial, and financial embargo against Cuba imposed by the United States.⁵ When the United States acts outside the enforcement mechanisms of the UN to impose sanctions, it may be using its legitimate discretionary powers to grant or withdraw aid or to grant or deny trade privileges. It may also be acting out of superpower arrogance (more euphemistically termed "US exceptionalism") with a dubious legal and political basis (e.g., in the case of the Helms-Burton Act, which provides measures against persons from third countries who do business with Cuba).⁶

The UN has imposed economic sanctions in 13 cases, 9 of which are currently enforced.⁷ The legal grounding of these sanctions lies in the Security Council's power to "decide what measures not involving the use of armed force are to be employed to give effect to its decisions." Under this authority, the Council "may call upon the Members of the United Nations to apply such measures. These may include the complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communications and the severance of diplomatic relations."⁸

From this legal basis, which presupposes a threat to or breach of the peace or act of aggression, 4 types of sanctions not involving military force are available.

Trade embargoes. Economic sanctions are the most commonly applied form of sanctions and the one that has the most significant public health consequences, normally in the form of trade embargoes and cessation of development assistance. Such sanctions were used against Iraq in August and September 1990 to induce withdrawal from Kuwait and after April 1992 to induce compliance with Security Council Resolution 687, which set the conditions Iraq must meet in the aftermath

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of Operation Desert Storm. They were also used against Yugoslavia (1991–1996) and Serbia and Montenegro (1992–1996), the social consequences of which were surveyed in 1994.⁹ In the case of Haiti, the Organization of American States (OAS) called for sanctions in 1991, but the Security Council did not impose binding sanctions until June 1993.¹⁰

Arms embargoes. Typically, the first response to military aggression or other threats to international peace and security is to limit the target country's access to weapons by means of an arms embargo and by curtailing military assistance. Iraq's invasion of Kuwait was the only case of a UN-mandated multilateral arms embargo following a trans-boundary attack.¹¹ Arms embargoes have also been imposed on Yugoslavia,¹² Somalia,¹³ Liberia,¹⁴ and Haiti.¹⁵ The direct public health implications of such sanctions are negligible, except for the general impact on civilian populations of prolonging the conflict, a possible consequence if the embargo prevents one side from achieving a decisive military victory.

Severing of communications. Preventing telephone and telegraph communication, delivery of mail, Internet access, and air, sea, and river travel is a means of focusing sanctions on the ruling elite of a recalcitrant regime. By their nature, such sanctions are more suitable for targeting those responsible for wrongdoing and avoiding harm to innocent civilians than is the prohibition of all forms of trade. Related to these measures are diplomatic isolation—withdrawing diplomatic personnel and refusing visas—and cultural and sports boycotts.

International criminal prosecution. In 1993, the Security Council invented an audacious form of sanction by establishing an international penal court to try individuals responsible for war crimes (serious violations of international humanitarian law) in the former Yugoslavia¹⁶; its jurisdiction was expanded in 1994 to include genocide and crimes against humanity in Rwanda.¹⁷ Because the Security Council acted under Article 41 of the UN Charter, the tribunal is a form of sanction, although it is not often referred to as such in the literature. Like the severing of communications, penal sanctions against individuals are likely to have a deterrent and retributive effect without endangering the health and well-being of the civilian population.

Effectiveness of Sanctions and Their Alternatives

The principal argument in favor of sanctions is that, in the case of a recalcitrant dictator, the preferable coercive measure is to block access to weapons, resources, and trade

advantages rather than resort to armed force. Whether such sanctions are effective is disputed in the literature.¹⁸ The claim in a classic study that economic sanctions have an overall success rate of 34%¹⁹ has been challenged,²⁰ and a theoretical model (spatial theory of crisis bargaining) was applied to the same data set in a study that found sanctions to have infrequent and modest impact.²¹ “In most cases,” the latter study concluded, “a state imposing sanctions on its opponent can expect an outcome that is just about the same as would be obtained without sanctions.”²²

The utilitarian assumption underlying the decision to impose sanctions is that the political gain will outweigh the human pain. In other words, there is a higher purpose that justifies the regrettable but unavoidable civilian suffering. This assumption often proves ill founded in practice; the greater good is rarely achieved and is morally unsustainable in terms of its costs.²³ If the aim of sanctions is to communicate a message or punish wrongdoing, then sanctions are on weak ethical ground because they create situations in which “human suffering becomes merely a device of communication” and “a wrongdoer remains untouched and an innocent person is gratuitously harmed.”²⁴ It is equally hazardous to assume that bombings and deployment of troops will succeed, short of the overwhelming force used to dislodge the Iraqi military from Kuwait. An alternative to both war and sanctions is the neglected realm of “positive sanctions” in the form of rewards, inducements, and incentives,²⁵ as is proposed in the case of Iraq.²⁶ In other words, more carrots and fewer sticks may be required. When sticks are necessary, the sending states must confront the risk of civilian harm.

Collateral Harm and Human Rights Accountability

The issue of harmful impact on civilian populations was brought to public attention in a significant way as early as 1991 by the study of the impact of the Gulf War and trade sanctions on epidemics and child mortality in selected Iraqi hospitals. This study was expanded to a nationwide survey of infant and child mortality, conducted by a team of 11 public health and medical professionals.²⁷ More than 30 major studies have been identified as dealing with the civilian impact of the war and sanctions against Iraq.²⁸ In 1996, the Center for Economic and Social Rights (CESR) sent a mission of 24 researchers, over half of whom were from the fields of public health and medicine, to review the impact of UN sanctions on Iraq in order to

assess whether the sanctions violated human rights. After considering the ethical and legal questions regarding UN sanctions against Iraq in the light of available data concerning economic conditions, health facilities, and health infrastructure, the CESR concluded that the “case of Iraq illustrates why sanctions are not always a humane alternative to war.”²⁹ The CESR argued that the UN Security Council should “hold itself accountable to its human rights obligations” and recommended that the Council “take less drastic means . . . to constrain the Iraqi regime without imposing the costs on the most vulnerable sectors of society.” Like Gibbons and Garfield, the CESR study raises the complex issue of the relationship between economic sanctions and human rights accountability.

It is tempting to consider that because (a) the rights to an adequate standard of living, to physical and mental health, to just remuneration, to education, to family life, and to other related rights are universally recognized and (b) serious studies by public health experts substantiate the claim that these rights have been violated as a result of economic sanctions, then (c) the “senders” of sanctions regimes—that is, the governmental and intergovernmental decision makers in Congress, the White House, the UN Security Council and the OAS—are perpetrators of human rights violations. The CESR and Gibbons in her book on sanctions in Haiti come close to succumbing to that temptation, the former stressing that “the [Security] Council remains accountable to human rights principles regardless of the conduct of the Iraqi government”³⁰ and the latter claiming that states that enforce sanctions in Haiti “inadvertently participated in violating the rights of Haitian citizens.”³¹

The identification of senders of sanctions with perpetrators of human rights violations is not so simple, for 2 reasons. First, as a matter of law, responsibility for a violation can only be attributed to a duty holder, in most cases a state that has ratified a treaty establishing the obligation in question, and neither the Security Council nor the UN in general is a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), or any other relevant convention. Moreover, treaties impose obligations on states to take measures within their jurisdiction—that is, within the national territory and, for a limited range of matters, for its nationals outside the territory—but not for foreigners in their own countries. Thus, the members of the Security Council have no treaty-based duty to ensure treaty rights for the citizens of Haiti, Iraq, Serbia, or other targeted countries.

One can hold states accountable, however, for actions that defeat the object and purpose of a treaty to which they are a party (or even that they have signed and not yet ratified, as is the case with the United States with respect to the ICESCR), and the aim of protecting the human rights set out in the ICESCR is part of that object and purpose. Such is the intention of the following provision of the Maastricht guidelines, adopted by a group of 30 human rights experts in January 1997:

19. The obligations of States to protect economic, social and cultural rights extend also to their participation in international organizations, where they act collectively. It is particularly important for States to use their influence to ensure that violations do not result from the programmes and policies of the organizations of which they are members.³²

The language is not that of firm obligation, but it is designed to acknowledge the importance of states' using their influence to prevent violations—for example, through decisions of the Security Council or the OAS to impose sanctions. There is, moreover, a duty upon the Security Council to “act in accordance with the purposes and principles of the United Nations,”³³ among which is the purpose of “promoting and encouraging respect for human rights and fundamental freedoms for all.”³⁴ Significantly, the Committee on Economic, Social and Cultural Rights, which monitors the application of the ICESCR, requires the state or entity imposing sanctions to take these rights “fully into account” when designing the sanctions regime, to monitor effectively the situation in the targeted country with respect to these rights, and to take steps “to respond to any disproportionate suffering experienced by vulnerable groups within the targeted country.”³⁵ In the case of Haiti, the UN and the OAS did take human rights into account by creating the Human Rights Civilian Observation Mission (MICIVIH), which Gibbons describes as “a positive action . . . that was quite different in nature from the negative action of sanctions.”³⁶ However, she also notes that its mandate excluded economic, social, and cultural rights, as a result of “pragmatic decisions” that “respect for Haitians' economic and social rights would be sacrificed for the sake of advancing their political and civil rights.” This dilemma emerged in the functioning of MICIVIH's Medical Unit, an unprecedented addition to a human rights component of a peace operation, which ran into difficulty in trying to reconcile mission headquarters' efforts to restrict its role to documenting abuse of civil and political rights with the participating medical practi-

tioners' duty to provide care when the situation called for medical assistance.³⁷

The second problem with the senders-as-perpetrators argument is both moral and legal: Senders of sanctions cannot be held responsible unless they intentionally seek to violate the rights in question or pursue policies that are so blatantly harmful to those rights that they fail to meet a minimum standard of compliance. The humanitarian exemptions that have been voted with sanctions in almost every case, and the supplemental humanitarian assistance programs funded by the “senders,” as well as their public statements of concern for the plight of civilian populations, make it difficult to find willful intent on the senders' part. Gibbons' reference to states “inadvertently” participating in violations,³⁸ and the use she and Garfield make of “unintentionally” in their article in this issue of the Journal, are indicative of the problems of accountability.

Nevertheless, the moral outrage of those who would like to hold senders of sanctions accountable as perpetrators of violations is justified, and passing blame to Saddam Hussein, Lt Gen Cédras, or Slobodan Milosevic is not enough. As a study commissioned by the UN concluded, “the amount of information available today on the devastating economic, social, and humanitarian impact of sanctions no longer permits [policymakers] to entertain the notion of ‘unintended effects.’”³⁹ A member of the Security Council has declared that “it is disingenuous to talk of ‘unintended side effects’ when everybody knows that the sector most affected by sanctions, as presently applied, are precisely civilian populations. There is nothing surprising or unintended about it.”⁴⁰ His statement was in reaction to a “non-paper” (an informal document used as a flexible tool for negotiation) by the 5 permanent members of the Security Council (P-5) that insisted that sanctions regimes should “minimize unintended adverse side-effects of sanctions on the most vulnerable segments of targeted countries.”⁴¹

This tension between the sound conclusions of public health surveys of countries targeted by sanctions and the uncertain attribution of responsibility for human rights violations underscores the need for more reflection on the relationship between health and human rights. There can be no doubt that the civilian populations in targeted countries are victims of human rights violations. The Committee on Economic, Social and Cultural Rights authoritatively declared that “the inhabitants of a given country do not forfeit their basic economic, social and cultural rights by virtue of any determination that their leaders have violated norms relating to international peace and security.”⁴² While it is

necessarily true that violations are committed by perpetrators, the principles of accountability for the human rights violations resulting from sanctions do not clearly identify the perpetrators or the consequences they should bear. Therefore, a more fruitful avenue is reform of sanctions to avoid such violations.

Rethinking Economic Sanctions

The policy community has been grappling with the dilemmas of sanctions, and numerous solutions have been proposed. In a widely quoted study for the Council on Foreign Relations, international lawyer Lori Damrosch proposed criteria for evaluating collective sanctions that address internal conflicts. She posits a “conflict containment criterion,” by which sanctions are assessed for their capacity to reduce or end conflict, and a “differentiation criterion” that rates higher those collective responses that “target the perpetrators of violence or other wrongdoing and minimize severe adverse consequences on civilians who are not in a position to bring about cessation of wrongful conduct.” She further distinguishes, within the differentiation criterion, the civilian impact, the wrongdoer impact, and the relationship between the two (“To the maximum feasible extent, a program of economic sanctions should be designed and implemented so as to avoid enriching the perpetrators of wrongdoing at the expense of their victims”).⁴³

More recent studies on sanctions in Iraq by David Cortright and George A. Lopez, in 1998⁴⁴ and 1999,⁴⁵ concluded that sanctions inflict “unacceptably high humanitarian costs.”⁴⁶ Applying criteria of legitimacy, effectiveness, and morality, they recommended restructuring sanctions to allow Iraq to purchase civilian goods, food and medicine, spare parts, and manufactured goods, while maintaining the arms embargo. They favor the use of “smart sanctions strategies that focus more on the wrongdoer than on the general population and economy.” The Global Policy Forum,⁴⁷ Gibson,⁴⁸ Gibbons,⁴⁹ and others have made additional policy recommendations.

One of the most systematic sets of recommendations was compiled in *Toward More Humane and Effective Sanctions Management: Enhancing the Capacity of the United Nations System*, a joint project of 3 institutions, which proposes a useful methodology for anticipating and tracking the impact of sanctions in public health, economics, population displacement, governance and civil society, and humanitarian activities.⁵⁰ The same 3 sponsors, along with 5 others, met with the chairpersons of the various sanctions

committees, senior diplomats, and nongovernmental organization and private sector representatives during the Symposium on Security Council Targeted Sanctions in New York in December 1998. Drawing on the work of the Interlaken Seminar convened by the Swiss government in March 1998, the New York symposium distinguished between efforts to break the target's "power to resist" (which can have "devastating humanitarian consequences") and efforts to break its "will to resist" (which require "the use of sanctions as tools of inducement rather than punishment."⁵¹ The symposium recommended impact preassessments, fine tuning of sanctions to reduce unintended consequences, technically competent monitoring, more effective administration of humanitarian exemptions, model legislation, and special measures for targeted financial sanctions, arms embargoes, and travel bans. The symposium concluded that "a strategy for more effective sanctions should target pressure on decision-making elites, while avoiding to the greatest extent possible adverse humanitarian consequences."⁵²

Reconciling Political Imperatives With Human Rights and Public Health

This reflection leads to several conclusions concerning the legitimate reasons for the preferred types of sanctions, as well as the valuable role human rights and health professionals might play in their implementation.

Legitimacy of sanctions. Unilateral measures for narrow national interests or ideological fervor are dangerous to world order and are usually unjustifiable on legal and moral grounds. Sanctions decided collectively in accordance with Chapter VII of the UN Charter are based on the valid grounds of a collective effort by the international community to preserve international peace and security.

Types of sanctions. It is true, as Minear contends, that "sanctions are not entirely or inherently hostile to humanitarian interests."⁵³ Economic sanctions are more likely to be hostile to those interests than the other 3 types of sanctions enumerated at the beginning of this commentary. Indeed, arms embargoes, severing of communication, and criminal prosecutions merit more systematic use by governments and offer greater chances of influencing the political decision makers in the target state than do economic sanctions. The latter place the human rights and public health of the civilian population at considerable risk and must be reformed along the lines proposed in the various studies cited.

The political climate is increasingly favorable to the restructuring of sanctions in

ways that are responsive to human rights and public health concerns. In the 1995 UN "non-paper" quoted earlier, the P-5 had already called for "unimpeded access to humanitarian aid," assessment of "the short- and long-term humanitarian consequences of sanctions," review of sanctions "to give due regard to the humanitarian situation," and expeditious consideration of humanitarian applications by sanctions committees. More recently, the UN Secretary General said he wanted to render "sanctions a less blunt and more effective instrument" by using "smart sanctions," which seek, in his words, "to pressure regimes rather than peoples and thus reduce humanitarian costs."⁵⁴ He favors sanctions that, in addition to the normal exemptions, include specific measures to protect the human rights of vulnerable groups, as recommended by the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child, which monitor the ICESCR and the CRC respectively.⁵⁵ He warns, however, that "these humanitarian and human rights policy goals cannot easily be reconciled with those of . . . sanctions"⁵⁶ that, as tools of enforcement, are expected to do harm.

The role of health and human rights professionals. Independent teams of investigators from the fields of human rights and health, using their own assumptions, methods, and professional standards, are justified in publicizing the unacceptable suffering that sanctions impose on civilians. In doing so, they are likely to cause more "tornadoes" of controversy, as Gibbons described the reaction to the November 1993 release of the Harvard School of Public Health's report *Sanctions in Haiti: Crisis in Humanitarian Action*.⁵⁷

Such tensions would be obviated if there were effective cooperation among public health, human rights, and peacekeeping professionals in implementing the recommendations of the recent studies. Health and human rights professionals are needed to seriously and systematically monitor, applying the carefully considered methodology and indicators that have been proposed,⁵⁸ the civil consequences of sanctions. Such individuals are invaluable in drawing attention to such consequences and urging funding of humanitarian assistance under sanctions regimes. They are vital to preassessment missions prior to the imposition of sanctions, as occurred with respect to Sudan in 1997.⁵⁹ They can make the case that economic, social, and cultural rights should be given as much importance as civil and political rights in monitoring and policy. In sum, they can provide the empirical and analytic basis for the argument that the "smartest" sanctions are those that do not sacrifice the health and human rights of the pop-

ulation of targeted countries for an uncertain political outcome. □

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