



The Question of Humanitarian Exceptions from UN Sanctions Regimes

ODU Model United Nations Society

Introduction: The Sanctions Dilemma

Nothing is worse for the UN Security Council than when its best efforts to stop hideous behavior punish the victims. Sanctions—restricting or prohibiting trade or travel with a targeted country, usually in response to grievous violations of international law or principles—are the most powerful tool the international community has, short of the use of force. But trade restrictions can harm innocent people without affecting their government. They can create humanitarian problems as serious as those they aim to solve. For the Member States of the UN Security Council, a major dilemma is how to strengthen the power of international sanctions without undermining their legitimacy by harming the innocent.

Restrictions on international trade date to the Napoleonic wars of 1792-1815, when the British led an alliance to block all trade with France and the countries it conquered, while Napoleon created a counterpart Continental System to stop the flow of goods to Britain and its allies. During the Cold War, the United States and its allies cooperated to prevent exports of strategic goods to the Soviet Union. But sanctions were not used much by the UN, where disagreement between the Cold War antagonists paralyzed agreement. Two of the best known exceptions involved efforts to promote decolonization and racism, in Rhodesia and South Africa.

Sanctions are among the most powerful tools when the international community has to deal with the worst crisis, such as genocidal warfare, proliferation of weapons of mass destruction, or support for terrorism. Generally, the only tools

that are stronger are authorized military interventions under Chapter VII of the UN Charter (Action with Respect to Threats to the Peace), something the international community very rarely agrees to do. Sanctions are a strong response, but less dangerous or destructive than going to war. A prominent example is the sanction system focusing on North Korea's development of weapons of mass destruction. Sanctions also can be used in combination with military interventions. An example of this are the sanctions against Islamic State, approved by the Security Council when several Member States were imitating their own military responses, including Russia and the United States.



Voting at the UN Security Council

Sanctions always are controversial, because they tend to target whole countries, including innocent civilians. This is clearest in situations like North Korea, which has an authoritarian government that is not democratically elected. Most Member States agree it is unjust to punish the people of North Korea for the actions of a government they may not support. In other cases, sanctions are aimed at destructive wars, such as the conflict in Yemen, but unless



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carefully designed their blanket prohibitions on trade also could stop humanitarian assistance. Unless sanctions are carefully designed, with humanitarian exceptions, they can easily harm millions of innocent people.

The most visible problems come when sanctions impede the flow of humanitarian assistance. Common problems come from the reality that humanitarian organizations often must work with sanctioned leaders to get aid into a country, whether it is a sanctioned country leader or a terrorist organization that controls territory like Islamic State. Aid can easily help a sanctioned government or terrorist group, for example, even when that is not the goal.

When humanitarian organizations need to pay taxes, registration fees or checkpoint fees to access populations in need, they may run afoul of these laws if they are paid to a terrorist organization or its affiliates. Other humanitarian aid activities that potentially violate counterterrorism provisions include visits to detainees, first aid training and provision of assistance, just to name a few.¹

Even worse is the problem of governments who deliberately target humanitarian actors, a problem that has been especially visible during the Syrian civil war, where the government of President Bashar al Assad has directly targeted emergency and humanitarian workers, in an effort to further isolate and demoralize their opponents.²

¹ UN News, 'UN sanctions: what they are, how they work, and who uses them', *UN News Centre*, 4 May 2016, <https://news.un.org/en/story/2016/05/528382-un-sanctions-what-they-are-how-they-work-and-who-uses-them#.V36EBZMrJTZ>

Types of Sanctions

While other international organizations can authorize sanctions—including regional organizations and even lone governments sometimes—UN sanctions have the greatest force, because UN Security Council decisions create binding international law for all 193 UN Member States.

Currently there are thirteen UN-sponsored sanctions regimes in effect:

- Democratic Republic of the Congo (UNSC Resolution no. 1493 and subsequent resolutions);
- Côte d'Ivoire (UNSC Resolution no. 1572 and subsequent resolutions);
- Sudan (UNSC Resolutions no. 1591 and subsequent resolutions);
- Lebanon (UNSC Resolution no. 1636);
- North Korea (UNSC Resolution no. 1718 and subsequent resolutions);
- Iran (UNSC Resolution no. 1737 and subsequent resolutions);
- Somalia and Eritrea (UNSC Resolution no. 1916 and subsequent resolutions);
- Libya (UNSC Resolution 1970 and subsequent resolutions);
- Central African Republic (UNSC Resolution no. 2127 and subsequent resolutions);
- Yemen (UNSC Resolutions no. 2140 and subsequent resolutions);
- South Sudan (UNSC Resolution no. 2206);
- Al-Qaeda, the so-called Islamic State of Iraq and the Levant (ISIL) and designated associates (UNSC

² HRC, 2018. *Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights on his mission to the Syrian Arab Republic*, A/HRC/39/54/Add.2, Human Rights Council, 11 September 2018



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Resolutions no. 1267/1989 and subsequent resolutions); and

- The Taliban and designated associates (UNSC Resolution no. 1988 and subsequent resolutions)

All UN sanctions currently in effect are partial regimes. They aim to compel compliance by national leaders or the leaders of armed groups without harming the needs and interests of innocent people. Typically, this means the sanctions are specifically targeted, to some extent.

The most common sanctions systems (or regimes) focus on armaments. Arms embargoes on states or groups engaged in armed conflict are designed to make further fighting impossible or less intense, reducing the dangers to civilians, reducing the risk the conflict will spread to neighboring states or regions, and making it harder for the fighting states to continue. Another important role of arms embargoes is showing that supplier states are not responsible for the conflict.

UN arms embargoes, currently authorized by the Security Council, and still in effect, are:

- Central African Republic (since 2013)
- Democratic Republic of the Congo (since 2013)
- Ivory Coast (since 2004)
- Eritrea (by since 2010)
- Iran (since 2006)
- Libya (since 2011)
- North Korea (since 2006)
- Lebanon (since 2006)
- Somalia (since 1992)
- South Sudan (since 2018)
- Sudan (since 2004/1994)³

In addition, there are other embargoes, such as those against Armenia and Azerbaijan, which come not from the UN Security Council but from regional organizations like the European Union (EU), the Organization for Security and Cooperation in Europe (OSCE), or the decisions of individual states to stop their arms exports and imports with a targeted state.

While arms embargoes usually are the least controversial, they are not without problems. A case can be made that when sanctions fall on all sides (all parties) to a conflict equally, they are neutral or impartial. But the reality maybe that such sanctions actually favor the side who is better prepared for warfare, usually the aggressor. Thus, sanctions may benefit one side in a conflict.

Even the idea of impartiality may be morally questionable, when one side is fighting less responsibility—doing less to protect the innocent than the other. When one side is engaging in genocidal violence, for example, does it make sense to sanction all parties to the conflict?

Humanitarian interests may be better served in such situations by sanctioning the greatest offender alone. Alternatively, the Security Council may decide that neither side should be allowed to win, and the Security Council can authorize the use of force under Chapter VII of the UN Charter, with a peacekeeping mission or outright intervention is the situation is awful enough.

Sanction dilemmas have become more public and controversial in recent years, just as sanctions became more commonly used. Solutions to this problem are not easy, above all because most goods and services traded internationally are *dual-use*, they can be used by

³ SIPRI databases: arms embargoes, Stockholm International Peace Research Institute, n.d., <https://www.sipri.org/databases/embargoes>



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armed forces or by civilians. Gasoline and Diesel, for example, can power armored vehicles or passenger cars, send troops on the attack or the innocent to hospital.

The most common response to sanctions dilemmas are exceptions for humanitarian organizations, permitting them to import food, fuel, personnel and cash to support emergency aid. To ensure the innocent are not harmed, sanctions resolutions usually are implemented under careful conditions, with thorough monitoring.

For example, the Security Council established, pursuant to SC resolution 1718 (2006) mandating sanctions against the Democratic People's Republic of Korea (DPRK or North Korea) for its nuclear weapons program, a series of measures to insulate its people, and better facilitate the delivery of humanitarian assistance to the DPRK.⁴

These resolutions clarify that sanctions adopted by the Security Council are not intended to have adverse humanitarian consequences for the civilian population of the Democratic People's Republic of Korea. Nor are they to harm or restrict those activities, including economic activities and cooperation, food aid and humanitarian assistance, that are not prohibited, as well as the work of international and non-governmental organizations carrying out assistance and relief activities in the DPRK for the benefit of the civilian population of the DPRK.

Such reforms do not have complete support throughout the international community. Some

UN Member States worry that too many exceptions and exemptions will undermine the effectiveness of sanctions. Rather than enhancing their legitimacy, as supporters of exceptions hope, such measures will erode their effectiveness and undermine support in the long run. Observers increasingly fear this problem makes it impossible to establish effective sanctions.⁵

Targeted Sanctions

Targeted sanctions grew out of the rising humanitarian movement of the 1980s and 1990s, a rising belief that international intervention must, above all, do no harm. International action, it was understood, often lacked the power to solve problems, but it could not remain legitimate if it made them worse. This led to the first effort to construct a system of partial sanctions on trade and travel for Iraq after the 1990-1991 war. The Iraq sanctions were comprehensive; they banned virtually all trade.

Aware of the danger this would cause for the people of Iraq, revenue of limited Iraqi oil sales was supported to be turned to civilians, 'Oil-for-Food'. The effort to stop Saddam Hussein from benefitting, while getting essential resources and channeling benefits to the people of Iraq, proved difficult for the UN to manage. The UN was widely seen as complicit in the suffering of Iraqi civilians, a theme exploited by Saddam Hussein to undermine the legitimacy of comprehensive sanctions. Iraqi officials blamed hundreds of thousands of civilian deaths, especially deaths of children, on UN sanctions.

⁴ Security Council 1718 Sanctions Committee Underlines Humanitarian Exemptions Pursuant to Paragraph 26 of Security Council Resolution 2375 (2017), UN Security Council, 8 December 2017, <https://www.un.org/press/en/2017/sc13113.doc.htm>

⁵ Katie King with Naz K. Modirzadeh and Dustin A. Lewis, *Understanding Humanitarian Exemptions:*

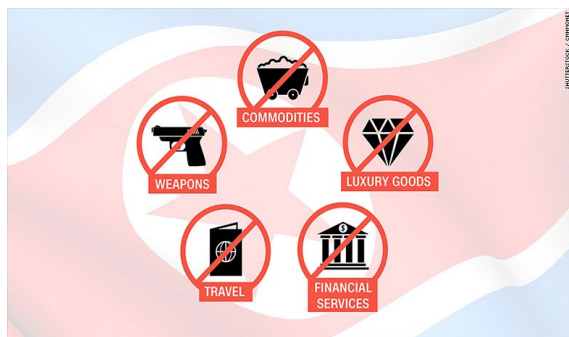
U.N. Security Council Sanctions and Principled Humanitarian Action, Harvard Law School Program on International Law and Armed Conflict, April 2016, http://blogs.harvard.edu/pilac/files/2016/04/Understanding_Humanitarian_Exemptions_April_2016.pdf



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A more refined version, without the huge administrative headaches and controversies of Oil-for-Food came in 1997-1999, when the UN created template for targeted sanctions by aiming travel bans, asset freezes, and blood-



diamond embargoes at the Angolan rebel group UNITA and empowering a committee and expert panel to monitor violations. ‘We will propose sanctions [in Angola] with no humanitarian consequences,’ boasted Sergei Lavrov, then Russia’s UN ambassador.⁶

All sanction systems since then have been targeted, with comprehensive regimes, including expert panels to monitor implementation and consequences, evaluating achievements and effects on civilians. And all sanctions must be renewed regularly—usually every six months or every year—by the UN Security Council.

⁶ Friedman, Uri, ‘Smart Sanctions: A Short History: How a blunt diplomatic tool morphed into the precision-guided measures we know today’, *Foreign Policy*, 23 April 2012, <https://foreignpolicy.com/2012/04/23/smart-sanctions-a-short-history/>

⁷ Robert McMahon, ‘UN Sanctions: A Mixed Record’, *Council on Foreign Relations*, 17

Unintended Consequences

An surprising consequence of the rise of targeted sanctions was a sudden explosion of the use of sanctions. Trade barriers, previously comprehensive and crude—were rarely approved the Security Council. Starting in the mid-1990s, targeted sanctions—designed to minimize humanitarian damage—became almost daily events. There are several apparent successes, including Liberia, Libya, and the former-Yugoslavia.⁷

But even targeted sanctions are not beyond criticism for causing civilian suffering. In the case of Iran, for example, targeted sanctions focused on two institutions closely associated with efforts to acquire weapons of mass destruction; Bank Mellat, and the Islamic Republic of Iran Shipping Lines (IRISL). They were instrumental in financial transactions for the Iranian military and Revolutionary Guards, and transport of military cargo. However, Bank Mellat was one of the biggest banks overall in Iran, and IRISL was the country’s largest shipping line, raising similar concerns about the repercussions of these supposedly targeted sanctions for the bulk of the population. The sanctions were lifted in 2016, after agreement on the Joint Comprehensive Plan of Action (JCPOA) limited Iran’s nuclear activity, the Iran deal.⁸

The rate of success for all sanctioned regimes is low. Targeted sanctions appear to fair little better in terms of effectiveness. Targeted governments and leaders often evade sanctions and avoid the full effect. Black markets, trade diversions, safe havens, strategic reserves, and

November 2006, <https://www.cfr.org/background/un-sanctions-mixed-record>

⁸ Kanji, Laur. ‘Moving Targets: The Evolution and Future of Smart Sanctions’, *Harvard International Review*, 4 January 2017, <http://hir.harvard.edu/article/?a=14138>



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economic adjustments allow leaders to avoid the consequences of sanctions or pass them on to the general population. In addition, UN sanctions often lack the speed and force necessary to produce meaningful change: on average, the Security Council takes 14 months to impose targeted sanctions, leaving regimes plenty of time to proactively adjust.

Most importantly, targeted sanctions are plagued by unintended consequences, found in 91 percent of cases. These consequences include virtually unavoidable impacts on a country's overall economy or political structure, higher corruption and criminality, the strengthening of authoritarian rule, greater political splintering, humanitarian costs, and unintended harms to neighboring countries. For instance, an arms embargo increases the costs of procuring weapons, potentially forcing government to devote more of its resources to weapons and therefore leaving those who rely on other areas of public spending worse off. Travel sanctions can affect the availability of food and medicine. All of these consequences affect the general population, particularly those without any political power — exactly the citizens that targeted sanctions aim to spare. An increase in corruption as well as in humanitarian crises also reflects poorly on the United Nations, costing the organization credibility in future conflicts. These consequences can undermine the purposes of sanctions, and sometimes worsen the situation. These problems led one analyst to conclude that 'The future of targeted sanctions can appear bleak'.⁹

Proposals for Action

International sanctions are losing support, leaving the Security Council with fewer

alternatives in any crisis short of going to war. There is great interest in enhancing the legitimacy and effectiveness of sanctions. But how is this to be done?

The great strength of the UN Security Council is that its resolutions establish binding international law, as supervised and enforced by the Security Council Members themselves. This makes Security Council resolutions the strongest form of intervention the UN system has. But it also raises great concern with the precedents they create.

It is no wonder that SC Member States often act with a distinctive combination of boldness and caution. Among the possibilities to be considered, listed from the least demanding to the most revolutionary:

Establish a standing review commission to continuously evaluate the implementation, effectiveness and humanitarian impact of all UN sanctions. This proposal probably would be supported by countries affected by sanctions and their supporters, especially by countries worried they might someday be the targets of UN sanctions. But expect opposition, especially from countries in favor of sanctions. Advocates will see greater oversight as a veiled campaign to stop sanctions altogether.

The UN Security Council can modify current sanctions resolutions to tighten or loosen humanitarian exceptions for specific situations. Through specific, case-by-case action, as it chooses, the Security Council can alter sanctions in specific situations to match particular humanitarian or political needs.

This approach is preferred by many Security Council member states since it does not change the principle of sanctions or establish a binding

⁹ Kanji, Laur. 'Moving Targets: The Evolution and Future of Smart Sanctions', *Harvard International Review*, 4 January 2017,

<http://hir.harvard.edu/article/?a=14138>



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precedent for changing future sanctions. It still creates precedents, but nothing with the power of resolutions with binding universal principles. Following the case-by-case logic, the Security Council might focus on sanctions exceptions for Yemen, for example, but not Syria. The country or countries to be excepted would have to be negotiated.

Require sanctions to be *smart*, focusing not on all trade but specific categories, such as armaments, goods favored by suspected officials or leaders (such as diamonds or oil, sometimes called *conflict goods*). This works best when major economic interests are not at stake among the states supporting the sanctions. In some situations, however, when sanctioned states have a monopoly or near-monopoly on the specific goods, when they are the dominant supplier, smart sanctions may be unacceptable to some Security Council members. A prominent example is the illicit trade in *coltan*, from the Democratic Republic of Congo, a valuable mineral, essential in the manufacture of high-capacity batteries used in applications such as electric cars.

Require that all sanctions regimes adapt *targeted* sanctions exclusively, focusing on not on entire countries but specific individuals, companies or armed groups. In some cases this is relatively easy, especially in problems like nuclear proliferation or counterterrorism, which the offending individuals, companies or groups are known. It is harder when sanctions are aimed at an entire armed conflict, such as Democratic Republic of Congo or Yemen. An effective system need not specify the individuals. Instead, it might state that the ‘leader or individuals responsible’ must be determined by a commission, established in the resolution.

Targeted or smart sanctions are popular, but their effectiveness is unknown. While they are less likely to affect the humanitarian rights of the innocent, they may worsen conflicts or inhibit conflict resolution, by making it harder for targeted leaders to give up without fear of facing individual prosecution.

Allow specific UN Member States to trade with sanctioned states or groups. An opt-out exception for specific countries may reduce some of the international consequences of UN sanctions regimes and broaden support. Such exceptions—which are not so much humanitarian as interest based—may serve the financial or even humanitarian needs of neighboring states. But such measures may be seen as undermining the credibility of any sanctions system.

Toughen sanctions by abandoning humanitarian restraint in favor of more universal restrictions. Several Member States are less interested in humanitarian goals and more supportive of measures that exacerbate tensions. Blanket sanctions—on all trade for example—are widely advocated by nationalist and conservative voices in some countries. The difficulty is in the UN Security Council, most sanctions targets have at least one ally with a veto, making compromise unavoidable.

For example, the Security Council agreed to permit humanitarian assistance to North Korea. But it still refuses to permit free trade in civilian goods like gasoline and diesel fuel, which civilians need to go about their normal lives. The objection is such goods are dual-use and could be used by the government, the military, or could be used indirectly to help the country’s industries produce prohibited weapons.¹⁰

¹⁰ Leo Byrne, UNSC backs new measures on humanitarian exceptions from North Korea sanctions’, *NK News*, 7 August 2018,

<https://www.nknews.org/2018/08/unsc-backs-new-measures-on-humanitarian-exceptions-from-north-korea-sanctions/>



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