

# **Making Sanctions Humane and Effective**

## **The Need for a UN Sanctions Compensation Fund**

By Uli Cremer

With the failure of economic sanctions against Iraq and Yugoslavia in the 1990's and the prospect of new sanctions against Iran looming, the United Nations Security Council should alter the way it thinks about sanctions. The UN Sanctions Compensation Fund could make the difference now – and in the future.

*“A nation boycotted is a nation in sight of surrender. Apply this remedy and there will be no need for force.” Woodrow Wilson*

Since the Iran case was handed over to the UN Security Council, international debate over sanctions has reawakened. The debate over sanctions against Iran calls for a look at the practice of economic sanctions in the past 15 years. After the disastrous effect UN sanctions had on the Iraqi people, the concept of “smart sanctions” arose, but the economic mechanisms of sanctions should be analyzed as well. The proposal to establish the UN Sanctions Compensation Funds (UNSCF) seems straightforward, but it must be accompanied by measures to humanize the effects on ordinary citizens. If the UN member states are prepared to fund such a program, economic sanctions might become a powerful and humane non-military instrument in the future. This would be a milestone toward Woodrow Wilson's vision of establishing sanctions as an *alternative* to war.

### **Arguments against Sanctions**

Since 1945 the UN has imposed sanctions against 14 states: Angola, Afghanistan, Cambodia, Haiti, Iraq, Liberia, Libya, Rhodesia, Rwanda, Sierra Leone, Somalia, South Africa, Sudan and Yugoslavia. More states were targeted by unilateral sanctions in cases where the United States and /or the European Union were not able to convince the international community to impose sanctions.

But even cases of economic sanctions endorsed by the UN Security Council have remained controversial, contested by diverse political actors, as well as peace activists. Hans Graf Sponeck, former coordinator of the Iraq “Oil for Food” program (1998-2000), concluded that “the experience in Iraq definitely proved that comprehensive economic sanctions should

be eliminated from the catalogue of forms of pressure within the international relations.”<sup>1</sup> Arguments against sanctions go in three directions. First, economic sanctions are ineffective; only military means achieve real results. Second, sanctions cannot be justified and result in simply another kind of war. Finally, economic sanctions strike the wrong people. The weakest (children, women and the elderly) are affected instead of the government and economic or political elites who have brought on the measure. Sanctions can even mean genocide, as we saw in Iraq from 1991-2003.

### **Efficacy of Sanctions**

In the Iraq conflict it is hard to judge the impact sanctions had because they were not used as an alternative to war, but in prelude and in combination with war. There is a difference between the state not being allowed to sell oil and the state being incapable of producing it because the refineries and infrastructure have been repeatedly destroyed by military attacks. Other cases are clearer.

In 1935 fascist Italy attacked Abyssinia. The League of Nations had a long debate about imposing sanctions. In the end, the most potent sanctions were not imposed. The delivery of food, coal, steel and oil continued. Even the British Suez canal was not closed for Italian transport ships. “Mussolini is famously reported to have chortled later to his German counterpart that if the League had included oil among its sanctions, he would have had to withdraw his forces from Ethiopia within a week”<sup>2</sup> This might be the first glimpse into how sanctions could have been very powerful in history, if they had been implemented effectively.

The UN embargo against Milosevic-ruled Yugoslavia from 1992-95 is another example. The objective was to stop the Bosnian-Serb war machine by targeting its backer. The German newspaper *Frankfurter Allgemeine Zeitung* commented: “Experts estimate that Serbia would collapse within ten days in the event of an oil blockade without loop-holes” (16 Jan 1993). However, oil continued to flow into Yugoslavia and even the Bosnian-Serb controlled area. In 1998/99 when the Kosovo conflict unfolded, a comprehensive oil embargo was again presented and alternative to military attack. Interestingly enough, an embargo was placed by the European Union, but three weeks *after* the military attack had started. To be fair, however, everyone knew that Yugoslavia obtained its oil from Russia, which rejected military measures and also saw no reason to stop oil supply. There were problems from within

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<sup>1</sup> Hans Graf Sponeck: *Ein anderer Krieg*, Hamburg, 2005, p. 329.

<sup>2</sup> Lisa L. Martin & Jeffery Laurenti, *The United Nations and Economic Sanctions*, United Nations Association of the United States (UNA-USA) brochure, New York, 1997, p. 4

the European Union as well. An earlier EU embargo decision from April 1998 was not fully carried out: the Bundeswehr continued to have their uniforms manufactured in Serbia. One year later the Bundeswehr or their allies dropped bombs on their own textile factory!

Above all, political will is needed to make economic sanctions work. The will has to extend not only to the decision but actual implementation as well, symbolic action achieves no results. Furthermore, embargos can only be effective if all relevant players are on board. This is an important difference from waging war, where coalitions of the willing might suffice. Arguments that economic sanctions do not work at all ignore all of these extenuating factors. Even ignoring these factors embargos are more successful than people think: research shows that between 33% and 50% of embargos are successful.<sup>3</sup>

### **The unilateral US Sanctions**

The fact that unilateral sanctions are ineffective has not been accepted by US political leadership. The principle of “multilateral if possible, unilateral if necessary” has been applied not only to warfare, but also to economic sanctions. In the 90s the United States celebrated a real sanctions orgy: Between 1992 and 1996, 60 sanction decisions were made. They were targeted against 35 countries and 42% of the world’s population. The hit to the US economy was estimated to be as much as \$19 billion in 1995 alone. The measures led to job losses between 200,000 and 260,000, and including service jobs, as many as 300,000. A Center for Strategic and International Studies (CSIS) study concluded that “comprehensive unilateral economic sanctions are almost always ineffective.” Furthermore, investment losses occur and strategic market positions are eroded. When the Cuban telecommunication net was modernized by European companies in the 90s, US companies lost that market for the foreseeable future. The burden of unilateral US sanctions resulted in IT&T’s decision to sell real estate in Cuba to their European competitors. The US’s original idea had, of course, been different; The Helms-Burton-Act was meant to keep non-US-companies from doing business with Cuba. Instead it resulted in EU-countries taking the United States to the WTO dispute settlement panel.

Since 1993 the Iran-Libya-Sanctions Act (ILSA) has prevented US companies from doing business with Iran. There is no doubt that the impact on Iran’s economy has been

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<sup>3</sup> See Daniel W. Drezner, *The Sanctions Paradox*, Cambridge, 1999, p. 62

significant (ca. 10% GDP). But in spite of all US efforts against companies from other countries that do business with Iran, even their NATO allies have not observed the sanctions for years. US companies suffered export losses and were driven out of the Iranian energy business. French, Russian, Malaysian and Chinese companies stepped in and happily benefited from the US embargo. Although political debate about the disastrous unilateral US sanctions began in the 90s, legal consequences have not followed. In 1998 a coalition of Democrats and Republicans put forward the “Sanctions Reform Act.” Their intention was to establish additional bureaucratic hurdles to imposing sanctions by involving other institutions such as ministries for trade and agriculture in the decision making process. The measure was defeated in the Senate 52 to 47.

When the Bush government came to power in 2001, its unilateral orientation led to a reduced focus on economic sanctions in favor of military means. Unilateralism is more compatible with military force than to economic sanctions, In 2003 France and Germany rejected the US attack on Iraq politically, but despite being willing to undermine economic sanctions by replacing US companies’ business, they would do nothing *material* against the unilateral military attack. Supplying weapons or their own troops to Iraq was clearly not an option for NATO member states. Consequently, in the latest US National Security Strategy comprehensive economic sanctions are no longer taken into consideration.

### **The UN Sanctions Compensation Fund**

When analyzing the multilateral sanctions policy within the UN framework, planning capacity may turn up as main problem. Normally sanction committees do not begin research and implementation until UN decisions have been. Resolutions have often been vague or immature. Imprecise objectives present another issue. During the Iraq embargo 1990-2003 the benchmarks were adjusted frequently. The Iraqi regime expected the embargo to be lifted when the war ended in 1991, but the UNSC instead had new objectives for them. In the following years as soon as the Iraqi regime could meet a goal, the next would be immediately set. The sanctions would have endured even without new benchmarks. The original embargo decision was unlimited and only one veto would have been enough to keep the sanctions in place indefinitely. This example shows the need for a sanctions codex with two essential elements. First, sanctions should always be limited in time. A new resolution (plus a new or permanent consensus within the UN security council) should be necessary to prolong

sanctions (e.g. after 12 months). And secondly, the countries embargoed should have the opportunity to bring the issue before the International Court.

On the other hand, UN sanctions need to be effective. For many politicians and scholars the solution is clear: effectiveness is dependent on the number of soldiers dedicated to enforce the embargo. Thus, they cry for (more) military troops to monitor and enforce the embargo around the targeted country. Unfortunately, this is a move in the wrong direction. As Bill Clinton famously said, "It's the economy, stupid." The effectiveness of embargos is primarily undermined by economic interests. The country under embargo is not the only one to suffer; countries that have been trading with that country are also hit. The embargo cuts the trade lines and results in economic losses for importing and exporting trade partners. Usually, the neighboring countries are those with the closest trade connections. In the cases of Yugoslavia and Iraq in the 90s, these were rather poor countries that were not in a position to shoulder the burden themselves. Economically strong countries like the U.S. or Germany are capable of dealing with the embargo effects on their economies. For instance, when sanctions were imposed on Yugoslavia in 1993, the direct and indirect economic damage to its neighbor Romania after 18 months totaled \$10 billion. Other neighboring countries encountered similar losses. Had they completely complied with the embargo the losses would have been even larger. But why should these countries have complied? Political will is dependent of the economic constraints. This example shows the need for compensation facilities on an international level. Since the UN imposed the sanctions, it should also have set up the necessary compensation fund. This idea is not at all revolutionary; for it is included in Article 50 of the UN charter: "If preventive or enforcement measures against any state are taken by the Security Council, any other state... which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems." When confronting the issue of compensation, two aspects have to be considered: funding and distribution.

## **Funding**

Funding is the most important task of the UN member states and could be managed similarly to the peacekeeping operations payments. The fund should not be filled up ad-hoc, when the crisis appears on the UNSC's agenda. This would damage the preventive character of economic sanctions. Instead the UN members should pay their share every year. Based on

past experience, 20 billion dollars may be a good starting point. For a country like Germany that would mean the amount of \$2 billion, which is less than 10% of the current military budget.

As soon as the fund is in place, economic sanctions will become more effective. These workable sanctions would act as a deterrent, and lead to quicker concessions—which is why the fund should not be started ad-hoc. If compensation is only needed for some days or weeks, big parts of the “strike fund” are spared. Sanctions would take on a *preventive* character, which would allow the fund to grow; only the permanent basic administration costs would have to be paid. It is even feasible that the UN assembly suspend the payments for one year.

### **Distribution**

The UN must determine who should have the right to file an application to the UNSCF: Individuals? Companies? States? All of the above? Perhaps lessons can be learned from the UN Compensation Committee (UNCC), which was founded in 1992 to deal with the compensation claims against Iraq. In this case, all three target groups could ask for compensation. 150 employees in Geneva managed the workload. They checked the applications which, until 2000, numbered 2.6 million and distributed \$18.4 billion by 2000 – money gained from Iraqi oil sales, which were under the UN’s control; 25% of the overall revenues were dedicated for compensation.

Evidently, the Romanian damage figures mentioned above had been exaggerated. Thus the UNSCF cannot consist of distribution only but must also include a validation process. The UNCC reduced valid claims to less than 1% of the original amount. On the other hand, “political approvals” led to final payments that exceeded the original application figures! Therefore, unlike the UNCC practice, transparency and openness are essential to prevent corruption and politically motivated decisions. Finally the UN’s Office of Internal Oversight Services must have a say over the compensation activities<sup>4</sup>.

With the UNSCF in place, the monitoring and enforcement of economic sanctions would become tremendously easier. As no underlying economic interests have to be balanced by force, military loses their role. Sanctions can be enforced internationally by the same

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<sup>4</sup> The compensation activities of UNCC have been controlled by UNOIOS, but they *ignored* the results.

institutions that are used nationally (e.g. when U.S. enforces unilateral sanctions on its own territory): instead of armies, customs officers and policemen are needed. The concept of the UNSCF was originally proposed in the 90s and made its way into important political documents. When in 1998 the Social Democrats and Greens took control of the German government, their coalition treaty included it. Unfortunately, during their 7 years in power no committees were started to promote and realize it.

### **The Humanitarian Impact of Sanctions**

Comprehensive sanctions logically have a comprehensive impact on the target country. While the inclusiveness is key in ensuring a sanctions' effectiveness, it also implies that the entire society suffers: the government, the economy and ordinary citizens. The effect on ordinary citizens is hard to justify, despite historic examples where brutal dictatorships were supported and enabled by the citizens. The example of the Nazi regime in Germany may suffice. However, in other cases the differentiation between government and people is certainly correct. Therefore, mechanisms are needed to ease the suffering of the weakest parts of the population. The lessons learned from the Oil for Food Program in Iraq demonstrate how to avoid and how and manage this issue.

The Iraq sanctions were continuously criticized for their cruelty against the weakest and most innocent of the Iraqi people. In 1995, the media reports suggested that "the sanctions were responsible for the deaths of 567,000 Iraqi children."<sup>5</sup> UN reports did not confirm the number, but acknowledged that a humanitarian tragedy was taking place. The Oil for Food Program was set up as a response. The first important detail is that the whole program was funded by Iraq itself, not by the UN. Even the many lucrative jobs UN administration, were paid for by the Iraqis. This must change—not only because in other cases the target country might not have anything like oil to sell. Illustrated by a domestic example the Iraq system would mean that criminals pay for prisons and criminal prosecution. These costs are paid, for good reasons, by the normal state budget. Thus, the UN must shoulder their own expenses, as well. The UNSCF has to include both aspects of humanitarian aid: administration costs and direct aid.

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<sup>5</sup> David Cortright & George A. Lopez: *The Sanctions Decade*, Boulder / London 2000, p.47

Another administrative lesson from the Iraq case is that humanitarian aid and compensation activities should be in *one* hand. Otherwise fruitless competition and quarreling between the different responsible UN units is inevitable. Therefore, the UNSCF should also include both aspects.

## **Smart Sanctions**

UN members have ignored the problems and consequences described. They were not prepared to invest large amounts into strengthening and humanizing economic sanctions. Instead, they found another way around the issue: smart sanctions, nowadays relabeled as “targeted sanctions.” The smartest aspect is the cost: “Because smart sanctions do not normally disrupt non-military trade they minimize costs to third-party states, reduce incentives to cheat and thus make it easier to sustain sanctions in the long term.<sup>6</sup>” Accordingly, they are easier to initiate than comprehensive sanctions. But are they equally as effective?

When the League of Nations was founded, Woodrow Wilson characterized sanctions as an *alternative* to war: “We shut their doors and lock them in. They are absolutely boycotted by the rest of mankind. I do not think that after that remedy it will be necessary to do any fighting at all.” Today sanctions are regarded as somewhere between condemnation and the direct use of violence. The main rationale for smart sanctions is that they could overcome the negative humanitarian effect of comprehensive sanctions: “Smart’ sanctions, like ‘smart’ weapons systems, are supposedly precision-targeted and designed to reduce ‘collateral damage;’ that is they are designed to coerce regimes without imposing harm on ordinary citizens.”<sup>7</sup>

Smart sanctions are tailored to target the political, economic and military elites. They are comprised of measures such as financial sanctions, which entails the freezing of overseas financial assets of government and regime members; the suspension of credits and grant aid; the denial or limitation of access to overseas financial markets; arms embargo; trade embargo, on luxury goods; flight and travel bans; and the denial of overseas travel, visas and

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<sup>6</sup> Strategic Planning Unit, Executive Office of the Secretary General, United Nations, New York: UN Sanctions: How Effective? How Necessary? March 1999, in: Documents of Interlaken 2 Conference, [www.seco.admin.ch/imperia/md/content/aussenwirtschaft/sanktionenundembargos/47.pdf](http://www.seco.admin.ch/imperia/md/content/aussenwirtschaft/sanktionenundembargos/47.pdf), p.112

<sup>7</sup> Ibid, p.111



educational opportunities to regime members and their families. All these means have been used in the past, on a unilateral basis or by UN mandate. From 1992-99 a flight ban was imposed on Libya. Financial sanctions hit Iraq and Yugoslavia, not to mention the many arms embargos against other states. So, what is new about these sanctions? The measures are now targeted against *individuals*.

Since 1998 the details of how the UN practice of 'smart sanctions' should be organized or improved have been discussed in several conferences and seminars sponsored and held by the Swiss, German and Swedish governments in cooperation with the Executive Office of the UN Secretary General. As soon as the first smart sanctions had been imposed and lists with names had been agreed upon, people affected started to complain and tried to get off the list. The principal objections consisted of arguments such as why should the dictator's son who is not guilty of human rights violations be prevented from studying abroad? Furthermore, as the Watson Institute at Brown University points out, "If these sanctions are wrongly imposed on listed individuals without granting these individuals the possibility of being heard or of challenging measures taken against them, there may also be a violation of the right of access to court, the right to a fair trial and the right to an effective remedy. Surprisingly intense discussions over how to correct such issues are under way. As long as *states* were targeted by comprehensive sanctions, debates over their validity garnered little attention. But sanctions on states can also be unjustified; what about their rights? Smart sanctions, based on UNSC resolutions, as well as comprehensive sanctions against states, should fall under the International Court of Justice jurisdiction, which should be empowered to review their legality. Thus, smart sanctions alone are not the easy path to moral cleanness.

In all debates over the improvement of UN sanctions practice the crucial point remains: that the more comprehensive the sanctions are, the more effective they will be. Those who seek effective sanctions must deal with the economic fallout. These economic factors and not monitoring and enforcement issues are primary. Effective sanctions with short-term effects cannot be realized without the UNSCF. However, funding is not likely to arrive as long as states continue to invest the current amounts in military means. So, in this way as well, the UNSCF is an *alternative* to military. The "pocket money" for smart sanctions can be paid additionally. All in all, the critique of "smart sanctions" should not lead to the conclusion that the entire debate is useless. The position in the overall picture should be clear; the shortcomings of smart sanctions a secondary concern.

*Uli Cremer, former spokesman for the Department of Foreign Policy of the German Green Party, is the author of “Neue NATO – Neue Kriege?” (New NATO – New Wars?), and currently works as manager of a multinational foods company*

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