

THE FAILED PROMISE OF UN SANCTIONS

BM Yaptırımlarının İşlemeyen Vaatleri

Berdal ARAL*

ÖZET

Bu makale, Birleşmiş Milletler (BM) Güvenlik Konseyi'nin ekonomik yaptırımlarına maruz kalan ülkelerde yaşayan insanların, güvenlik ve refah açısından, hükümetlerine yönelik bu cezalandırmadan nasıl etkilendikleri konusu üzerinde durmaktadır. Burada, hedef alınan ülke ekonomisine ciddi düzeyde zarar vermeyi amaçlayan kapsamlı yaptırımların, Irak'ta gözlendiği gibi, gerçekte sıradan insanların hayatında önemli mağduriyetlere yol açtığı ve çocuk ölümlerinde vahim düzeyde artış ve okullaşma oranında keskin düşüş gibi sonuçlara yol açtığı ileri sürülmektedir. Bu çalışmanın son bölümünde ise, klasik/kapsamlı BM yaptırımlarına yönelik yaygın eleştirilere bir tepki olarak formüle edilen "akıllı yaptırımlar"ın, yalnızca hedef ülkenin izlediği hukuk-dışı politikaların sorumlusu olan seçkinlere zarar verdiğine ilişkin yaygın kabulün ne denli isabetli olduğu sorgulanacaktır.

Anahtar Kelimeler: BM Kurucu Andlaşması; BM Güvenlik Konseyi kararları; ekonomik yaptırımlar; insan hakları; akıllı yaptırımlar.

ABSTRACT

This article deals with the impact of United Nations (UN) Security Council economic sanctions on the security and welfare of the people whose governments happen to face such punishment. It is argued that, as the Iraqi case indicates, comprehensive sanctions which intend to cripple the economy of the target state, in effect cause untold miseries for ordinary people and lead to humanitarian catastrophes such as the dramatic rise in infant mortality and sharp fall in schooling. The final part of the article probes the "truth" about the commonly-held view that the selective and limited sanctions known as "smart sanctions", introduced as a response to widespread condemnation of classical/comprehensive UN sanctions, only hurt the elites that are largely responsible for the improper behaviour of the target state.

Key Words: UN Charter; UN Security Council resolutions; economic sanctions; human rights; smart sanctions

If we are to identify the *raison d'être* of the United Nations (UN), it should be no other than the **maintenance of international**

peace and security. Other goals such as promoting international cooperation, solving economic and social problems at the interna-

* Berdal Aral, Assoc. Prof. Department of International Relations, Fatih University, Istanbul, Turkey, baral@fatih.edu.tr

tional level, and protecting human rights are assigned with a less prominent standing at the hierarchy of UN objectives. As enshrined in the UN Charter, UN Security Council (SC) assumes the royal, almost privileged, task of deterring potential aggressors and restoring international peace and security once they are breached. The legislative scope within which the SC operates is almost without bounds. In case the SC establishes that a particular state is in breach of international peace, it may set in motion a storm of resolutions ranging from the imposition of economic and diplomatic embargoes to the taking of collective military action. That the SC has the monopoly of competence over the issues of war and peace is obvious enough. But it is equally significant to bear in mind that the architects of the UN Charter did not consider it useful or necessary to bring checks and balances to the Herculean powers assumed by the SC under the founding treaty. Concentrating power in the hands of 15 states, 5 of which being the victors of the Second World War that have permanent membership with the accompanying power of veto, means that “undesirable” draft resolutions cannot get through the SC.

It is all-too-well-known that power corrupts; absolute power corrupts absolutely. This description well fits the case with the SC whose newly gained activism in the early 1990s following the passing of the Cold War and the collapse of socialist regimes in Europe and the ex-Soviet Union, fostered hopes for a new world marked by peace, freedom and prosperity. However the experience of the last 20 years or so has dashed such hopes in the greater part of the world. The insatiab-

le greed of the US –aided in particular by Britain in the SC – for hegemonic power that verged on a desire to become a world empire has manifested itself along the myriad of mandatory resolutions which the SC issued under the rubric of Chapter VII of the UN Charter: threats to international peace and security. The arbitrariness and harshness which characterized many of the SC decisions, particularly in the 1990, to institute economic sanctions against countries like Iraq, Haiti, Liberia and Afghanistan were widely condemned by human rights activists and international organizations. Likewise, UN-authorized military interventions against selected group of states accused of military aggression or those that were justified on humanitarian grounds under the title “humanitarian intervention”, as in the case of the Gulf War against Iraq or the Somali campaign (1992-94) have drawn widespread condemnation from a large segment of international society.

This article focuses on the process that paved the way for the forming of consensus around what is commonly called “smart sanctions” which have today become the prevailing format of acceptable sanctions introduced by the UN SC. Indeed, today, instead of wholesale embargo, the states which are targets of UN sanctions are confronted with “targeted arms embargo”, “financial sanctions on entities and individuals linked to the government”, and “travel restrictions on listed individuals”. This is presently the case with regard to target countries such as Iran, North Korea, Democratic Republic of the Congo, and Sudan. This article will proceed along the line of questions posed below:

a) Why are UN economic sanctions incompatible with international law, morality and human rights?

b) How “smart” are targeted/selective economic/financial sanctions from the perspective of international law, morality, and human rights?

The System of Collective Sanctions in the UN Charter

Before we begin to examine the UN sanctions (or, embargoes), it is apt to draw on other types of sanction: **regional sanctions**, and **unilateral state sanctions**. Sanctions are generally intended to change the behaviour of an international actor. Such actions are permitted by international law so long as they do not constitute economic or political coercion designed to force the victim to submit to the will of the sanction-imposing state or organisation. The US embargoes against Cuba (since 1962) and Iran (soon after the Islamic revolution in 1979), comprising economic, commercial and financial sanctions, are certainly a breach of international law because the prime motive is to force the downfall of the regimes in these countries. This is contrary to the principle of **sovereignty of states** and **non-intervention**. The Arab League economic boycott of Israel³¹ is, meanwhile, a permissible response of Arab states to the aggressive and expansionist policies of a hostile state.

Under the terms of Chapter VII of the UN Charter (Charter of the United Nations, 1945), the SC has the necessary power to im-

pose economic sanctions in case of breach of peace. Instituting embargo may perhaps be the first step before the Council decides to take or authorize military enforcement action against the target state. The most authoritative definition of sanctions, not however made in the UN Charter, has been provided by the International Law Commission (of the United Nations): According to this definition, sanctions are:

reactive measures applied by virtue of a decision taken by an international organization following a breach of an international obligation having serious consequences for the international community as a whole, and in particular for certain measures which the United Nations is empowered to adopt, under the system established by the Charter, with a view to the maintenance of international peace and security. (Draft articles on State responsibility, 1979)

The course of action, short of war, which the Council may choose to take, is a matter for itself. It is also up to the SC to decide as to whether a particular action on the part of a state constitutes a “breach” of international peace and security. In other words, the monopolies of defining international “threats” to the safety and security of humanity and the methods to challenge the threat are left to the discretion of the SC. Article 41 and 42 mechanisms are not exclusive of one another. Article 41 reads as follows:

³¹ The boycott still holds, but it is not as strictly enforced as before.

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Apparently this article confers on the SC almost unlimited powers that fall short of direct military action. Indeed the list of measures, or sanctions and other actions, which may be brought to bear against a state that allegedly threatens or breaches international peace and security, may range from economic and military sanctions to the creation of ad hoc International Criminal Courts. However “the non exhaustive list may be extended by the judgement of the Security Council to include other appropriate measures.” (Gareis & Warwick, 2005, p.85)

The fact that the SC has the monopoly of assessment as to whether a specific problem or situation constitutes a threat to international peace and security, inevitably gives way to abuses and selective behaviour. While one instance of military aggression may be considered as a threat to peace and incur sanctions, a similar course of action may be met by a deafening silence on the part of the SC. Such considerations are not necessarily the result of the fair assessment of a particular crisis, but more often than not, are an outcome of national interests and strategic calculations of major decision-making actors in

the SC. This partiality, as well as the “some are more equal than others” system of representation and voting in the SC as manifested in permanent membership (US, Russia, UK, France and China) and the accompanying right of veto, means that no forceful action may be taken in the SC against a state if one of the permanent members objects. This naked truth defies one’s sense of fairness and justice. As well put by Bernhard & Warwick in referring to the failed UN-led military intervention in Somalia (1992-1994):

the selectivity born of interest that emerged after the failed action in Somalia, above all among industrialized countries, is impossible to ignore. It also raises the suspicion that certain countries may attempt to instrumentalize the collective security system for their own ends. These developments caused not only the effectiveness of the system as a whole, but also the legitimacy of the Security Council’s decisions to slide further into crisis. (Gareis & Warwick, p. 87)

Under the Charter provisions, the SC is not required to apply either Article 41 or Article 42 procedure. In other words, the SC is not obliged to select one piece of collective action, say, economic embargo or military enforcement action (Article 42), at the expense of the other, to achieve its goal of preserving or restoring international peace and security. This is to suggest that “the Charter does not delineate any hierarchical order of escalation in which the effects of softer measures must be awaited before the Security

Council can turn to military force.” (Gareis & Varwick, p. 85) The UN practice testifies this. The SC maintained the comprehensive economic sanctions against Iraq up until May 2003, when the Iraqi regime withered away following the US-led invasion in March 2003, although the UN authorised military operation ostensibly to “liberate Kuwait” had ended 12 years ago (April 1991). This is an apparent abuse of the wide discretionary powers which the UN Charter assumes under the terms of the UN Charter.

One major problem about the UN-imposed economic sanctions is the priority which the SC usually gives to the considerations of **peace and stability**, often at the expense of **human rights and justice**. This dilemma is well-put by Köchler: “In the normative logic of the UN Charter – and especially of Chapter VII – peace apparently assumes priority over human rights, as has become especially evident in the sanctions policy of the Security Council since the end of the East-West conflict.” (Köchler, 1994) Under the pretext of punishing and disciplining governments that endanger international peace and security, the brunt of sanctions are almost always carried by ordinary people. The hideous meaning which UN embargoes may come to take is well exposed by Köchler:

In the first place, coercive measures like economic sanctions represent a form of collective punishment and thus do not comply with the ethical principle of individual responsibility, i.e. with the ability to attribute behaviour to an individual. The punishment of people

not responsible for political decisions is most akin to a terrorist measure; the aim of such a measure is to influence the government's course of action by deliberately assaulting the civilian population. (Köchler, 1994)

In paragraph 14 of a report prepared by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, it is alarmingly noted that “sanctions imposed by the Security Council have indiscriminately impacted on civilian populations.” (“Implications of Humanitarian Activities for the Enjoyment of Human Rights”, 1994) If the economic infrastructure of a target state has been damaged, then economic sanctions will have caused greater harm and hardship for the lives of the ordinary people.

Ironically, in some cases, UN SC's growing concern with human rights has become a cause for concern due to some misgivings about sanctions. If the SC evaluates a particular human rights situation in a given country to be sufficiently serious, it may declare that “this is a threat to international peace and security”. The Council may thus decide to take action in the context of **humanitarian intervention**. If applied fairly, this new doctrine, propounded in the early 1990s, could provide relief for oppressed peoples all around the world. As the history of humanitarian intervention indicates, this is doubly problematic in terms of the fair application and interpretation of international law: First, it is mostly up to the SC member states to decide as to whether a particular instance of grave and systematic human rights violation constitutes a threat to international peace and

security. If the SC thinks otherwise, a calculation not free from power politics, then the SC may prefer not to act in the face of massive human suffering. Secondly, neither the **UN Charter** nor the resolutions of the SC makes even an indirect reference to human rights in the context of the negative impact of sanctions on human lives. (Köchler, 1994) Thus, here, we have the familiar problem about the human costs of sanctions.

It is groundless to claim, as some states do, that UN SC actions based on Chapter VII procedure, although privileging the SC and putting no specific restraints, is not in any way constrained by general international law. The preamble of the UN Charter states that one of the primary goals of the UN is “to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.” This suggests that the UN would be in breach of its obligations when it violates international law. (Reinisch, 2001, p. 857) On the other hand, human rights are among the values and goals which the UN takes upon itself to protect and promote. Indeed under Article 1(3) of the UN Charter, repeated in Article 55 of the same, one of the main goals of the United Nations is “promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”

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In many cases of UN economic sanctions and embargoes, as applied against states such as Iraq, Haiti and Afghanistan in the 1990s (and well into the 21st century in some cases), were discredited as a result of the untold tragedies which they set in motion. These sanctions created a shortage of basic provisions of life, like food and medicine, for the survival of populations in the said states. Such extensive sanctions constitute a violation of the right to life, health, and an adequate standard of living, as enshrined in Article 3 and Article 25(1) of the **Universal Declaration of Human Rights** (1948) respectively, as well as in Article 6(1) of the **International Covenant on Civil and Political Rights** (1966) and Article 11(1) of the **International Covenant on Economic, Social and Cultural Rights** (ICESCR) (1966) combined.³² Besides, under the terms of Article 1(2) of ICESCR, “In no case may a people be deprived of its own means of subsistence.”

That sanctions have from time to time been used by certain members of the UN SC, in particular the US, to coerce “unruly” states/regimes into submission either through Article 41 of the UN Charter or through unilateral embargo constitutes a clear violation of international law. This has been the case with regard to the deadly UN sanctions against Iraq (1990-2003), sanctions against Iran

³² Article 3 of the Universal Declaration of Human Rights (UDHR) holds that “Everyone has the right to life.” Article 25(1) of the UDHR states: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.” According to Article 6(1) of the International Covenant on Civil and Political Rights, “Every human being has the inherent right to life.” Article 11(1) of the International Covenant on Economic, Social and Cultural Rights maintains that “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”

on the pretext of its nuclear programme (2006-), and military sanctions against Sudan³³ (2004-) and Lebanon³⁴ (Hizbullah) (2004-). The list of states and political/military actors that these sanctions intend to hurt are targeted particularly because they have refused to play into the tune of US imperial designs in the Middle East and Africa. In the section regulating “principle of non-intervention”, **United Nations Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations** (1970) stipulates that “No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind.” This prohibition was later reiterated in Article 32 of the **Charter of Economic Rights and Duties of States**, adopted in 1974. According to Article 7 of this Charter (1974), “Every State has the primary responsibility to promote the economic, social and cultural development of its people.”

Economic sanctions tend to exacerbate the economic and social problems associated with poverty. They limit the capacity of an

economically developing nation to achieve substantial economic growth. Economic sanction as a “collective punishment” is an assault on the “right to development” of a people. As Article 1(1) of the **Declaration on the Right to Development** of 1986 declares:

The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

In the light of the preceding analysis, it needs emphasizing that comprehensive economic sanctions violate the following human rights of individuals and communities at the receiving end: right to life; right to an adequate standard of living; right to health. Therefore, they violate the second category of human rights known as **economic and social rights**. At the more macro level, such sanctions breach the right to development and the **right to peace** of a people as part and parcel of collective rights.

³³ Since gaining power in 1989, the “Islamic” government in Sudan has pursued a revolutionary agenda that has challenged the American dominance in the Middle East, Sudan and the surrounding regions of Africa. While refusing to provide exclusive economic privileges to the US government and corporations especially over huge oil and natural gas reserves, Sudan has established close economic and trade ties with states such as China and Malaysia. Sudan has been put on the dock of UN sanctions since 1996 on the pretext, first, of supporting international terrorism (1996-1999), and, second, committing massive human rights violations in Darfur, western Sudan (2004-).

³⁴ That Lebanon hosted Syrian troops for a very long time was suddenly in 2004 considered by the UN Security Council as a threat to peace and security, although no official request for the withdrawal of Syrian troops had been made by the Lebanese government prior to the resolution. Besides, the storm of resolutions which the SC has adopted since, called for the disarming of Hizbullah guerrillas that were in fact the backbone of the Lebanese resistance against Israeli occupation. Part of south Lebanon which had been under Israeli occupation for a very long time was liberated in 2000. Only Sheba farms continue to remain under Israeli control.

This explains why the UN Sub-Commission on Human Rights appealed in 2000 “to all States concerned to seek prompt termination of all aspects of sanctions regimes that adversely affect human rights, that contravene international law or that conflict with other norms of international law”. (Office of the High Commissioner for Human Rights, 2000) The working paper prepared by the Sub-Commission on the Promotion and Protection of Human Rights the same year, proclaimed that the comprehensive sanctions regime put in place against Iraq by the UN Security Council was “unequivocally illegal under existing international humanitarian law and human rights law”.³⁵ Even Reinisch, who tends to make a literal reading of the UN Charter and the international law of treaties, while claiming that the UN is **not** bound by human rights treaties as a matter of treaty law, admits that the SC is bound to “respect the rules of humanitarian and human rights law.” (Reinisch, 2001, p. 854)

“Smart Sanctions”

In the last decade or so, it has come to be almost universally accepted that comprehensive sanctions, designed to punish and/or change the behaviour of mostly states, that breach international peace and security under conditions defined by the UN SC ought to be replaced by “smart sanctions”. The humanitarian consequences, it is (rightly) argued, are so grave that the “usefulness” of such sanctions is put in serious doubt. The protagonists of this view have asserted that the

best way to avoid collective suffering in case of sanctions, unilateral, regional or UN-based, is to resort to smart sanctions that target particular groups and sectors which are most closely associated with the apparatus of the state responsible for the fundamental breach of its obligations, be it aggression or grave and systematic human rights violations. In this way, damage to innocent civilians could be avoided. International actors, including the UN, have come to accept this view and have changed their attitude accordingly.

Hence the latest wave of UN sanctions mostly falls into this category (smart sanctions). These sanctions were or have been applied against those that are held responsible for inter-state wars (for instance Ethiopia/Eritrea), against states or political/military forces that are accused of causing and/or abetting civil wars (for instance, Angola, Liberia, Sierra Leone, Democratic Republic of the Congo), those that are allegedly engaged in international terrorism (for instance, Afghanistan, Sudan), and against Iran for its nuclear energy programme. Smart sanctions, as applied by the UN SC, mostly consist of “targeted arms embargo”, “financial sanctions on entities and individuals linked to the government”, and “travel restrictions on listed individuals”. This is certainly less painful compared to comprehensive economic sanctions in respect of human consequences.

However even smart sanctions do not altogether dispense with the negative humanitarian consequences of old sanctions. First, it is not conceivable that the state facing fi-

³⁵ Sub-Commission on the Promotion and Protection of Human Rights, “The Adverse Consequences of Economic Sanctions on the Enjoyment of Human Rights, UN Doc. E/CN.4/Sub.2/2000/33, para. 6. Geneva: UN Economic and Social Council, 21 June 2000. It is estimated that about one million Iraqis lost their lives as a result of this harshest of sanctions, at least half being babies and children.

nancial embargo may be deprived of the financial means to obtain food and medicine. Financial sanctions can be perilous for the economic lifeline of a state. Such sanctions seek to achieve more diverse goals than those that come to mind at first sight: “to restrict elite access to financial and monetary resources”; “reduction of aid”; “denial of loans”; “seizure or freezing of individual and organizational accounts”. (Shagabutdinova & Berejikian, 2007, p.62) The statistical results of a study conducted lately have revealed that “financial sanctions are more effective than trade sanctions, when imposed alone or in combination with trade restrictions.” (Shagabutdinova & Berejikian, p.62) This suggests that, the so-called “smart sanctions” which have for instance been put in place against Iran since 2006, are heading towards strangling Iran, both economically and financially, by virtue of the comprehensiveness of financial sanctions, put in place in addition to military restrictions.³⁶ Second, smart sanctions may be used by states like the US to weaken its adversaries. As an American scholar puts it bluntly, the goal of UN and US embargoes against Iran is not limited to forcing Iran to abandon its nuclear programme. The US also wants to punish the Iranian “Islamic” regime, forestall the flow of foreign investment in Iran, and weaken the Iranian regime. (Jacobson, 2008, pp. 74-79) Indeed the combined impact of military and financial sanctions can be deadly for the defensive capacity of sovereign states. The lead up to the US-led invasion of Iraq in March 2003, the enduring UN embargo against Iraq deprived Iraq of the military means

to defend itself. The invasion of Afghanistan, likewise by a US-led coalition in 2001, was largely facilitated by the UN arms embargo that had been put in place in 1999. The picture is too clear for anyone to see. Who can, then, claim that a similar chain of events is not presenting itself for Iran?

Conclusion

To be legitimate, the system of collective security in the UN ought to be premised on two main pillars: first, caution should be given not to harm the fundamental rights of the individual when a multilateral action is taken in the context of Chapter VII of the UN Charter; second, rules should be applied properly irrespective of the identity of the aggressor or the victim, i.e. there should be no double standards. (Köchler, 1994) From this perspective, the collective security system of international society as manifested in the UN Security Council appears rather problematical in terms of legitimacy: first, enforcement actions based on Article 42 of the UN Charter, and economic, military, diplomatic and financial sanctions based on Article 41 of the same are applied selectively. Second, classical economic sanctions, and, to a lesser extent, smart sanctions almost always cause human suffering on a grand scale –even if not intended.

The heart of the matter is that, so long as the UN SC maintains its monopolistic hold over issues concerning international peace and security, permanent members, or some of them, will be tempted to use this

³⁶ The UN SC has adopted a storm of resolutions that have seen the tightening of selective sanctions against Iran: Resolution 1696, 31 July 2006, Security Council SC/8792; Resolution 1737, 23 December 2006, Security Council SC/8928; Resolution 1747, 24 March 2007, Security Council SC/8980; Resolution 1803, 3 March 2008, Security Council SC/9268.

prerogative in pursuit of national goals and imperial exploits. To hope for otherwise is akin to imagining snakes behaving like hares!

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