

THE ADVERSE CONSEQUENCES OF ECONOMIC SANCTIONS ON THE ENJOYMENT OF HUMAN RIGHTS

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1. The working document (E/CN.4/Sub.2/2000/33), prepared “without financial implications” as requested by the UN Sub-Commission on the Promotion and Protection of Minorities on 26 August 1999 in its decision 1999/111 of 26 August 1999, was presented to the Sub-Commission on 16 August 2000. This was the follow-up to resolution 1997/35 of 28 August 1997, in which the Sub-Commission had stressed four specific points concerning such measures:

“(i) They should always be limited in time (fourth preambular paragraph);

(ii) They most seriously affect the innocent population, especially the most vulnerable (fifth preambular paragraph);

(iii) They aggravate imbalances in income distribution (sixth preambular paragraph);

(iv) They generate illegal and unethical business practices (seventh preambular paragraph)”.

2. With regard to the nature of the actions undertaken, a brief classification of sanctions was provided :

(i) Two basic forms of economic sanctions:

(a) Trade sanctions restricting imports and exports to and from the target country;

(b) Financial sanctions addressing monetary issues.

(ii) Other forms of sanctions include:

(a) Sanctions against the travel of certain individuals or groups and sanctions against certain kinds of air transport;

(b) Military sanctions including arms embargoes and the termination of military assistance or training;

(c) Diplomatic sanctions revoking visas of diplomats and political leaders;

(d) Cultural sanctions banning athletes from international sports competitions and artists from international events.

3. A six-pronged test to evaluate sanctions was proposed:

(i) Are the sanctions imposed for valid reasons?

Sanctions under the United Nations system must be imposed only when there is a threat of or actual breach of international peace and security. Sanctions should not be imposed for invalid political reasons and should not arise from or produce an economic benefit for one State or group of States at the expense of the sanctioned State or other States.

(ii) Do the sanctions target the relevant parties?

Sanctions should not target civilians who are not involved with the threat to peace or international security, nor should they target, or result in collateral damage to “third party” States or peoples.

(iii) Do the sanctions target the relevant goods or objects?

Sanctions should not interfere with the free flow of humanitarian goods and they should not target goods required to ensure the basic subsistence of the civilian population, nor essential medical provisions or educational materials of any kind. The target must have a reasonable relationship to the threat of or actual breach of peace and international security.

(iv) Are the sanctions reasonably time-limited?

Legal sanctions may become illegal when they have been applied for too long without meaningful results. Sanctions that continue for too long can have a negative effect long after the wrongdoing ceases.

(v) Are the sanctions effective?

Sanctions must be reasonably capable of achieving the desired result in terms of threat or actual breach of international peace and security. Sanctions that are targeted in ways that would not affect the wrongdoing, may be viewed as ineffective.

(vi) Are the sanctions free from protests arising from violations of the “principles of humanity and the dictates of the public conscience”?

The reaction of Governments, intergovernmental bodies, non-governmental organizations, scholars and the public must be taken into account in evaluating sanctions regimes.

4. The whole theory behind economic sanctions appears to be fallacious. It is assumed that pressure on civilians will in turn translate into pressure on the Governments for change. However, in regimes where political decision-making is not democratic, there is simply no pathway through which civilian pressure can bring about change in the Government. As sanctions are generally imposed on countries where the Governments are not periodically subjected to free and transparent elections, the population has no chance to penalize their leaders that pursue a policy resulting in sanctions imposed upon them. It is also unlikely that those leaders, once they become aware of the suffering their policy entails for their population, will modify that policy. If they would be sincerely concerned about the fate of their people, it is unlikely that their country would ever become the object of economic sanctions.

5. Of course, the most important criterion in evaluating sanctions is their legitimacy and it can hardly be disputed that sanctions imposed by the Security Council – unlike sanctions unilaterally imposed - are legitimate. However, sanctions which are legitimate at the outset may cease to be so, if after a reasonable period of time they do not lead to the desired result. The lack of efficacy impairs their legitimacy. The risks are high that as, in the absence of the desired result, the adverse consequences for the enjoyment of human rights become progressively more important, the justification for maintaining the sanctions gradually fades away. This is why the imposition of sanctions for an indefinite period of time should be avoided and a periodic evaluation of their efficacy – and hence legitimacy – should always be provided for.

6. In order to avoid adverse consequences for the civilian population, preference should be given to so-called “smart sanctions”. Such sanctions are conceived of as directly affecting the political leaders, while leaving the innocent civilians unaffected. . They may target the personal foreign assets and access to foreign financial markets of members of the Government, the ruling elite, or the military. Assets of government-owned business may be frozen and investment in those businesses prohibited. Imports of luxury goods may be banned. Lists may be drawn up with the names of political and military leaders whose assets are to be frozen, and who are to be subject to travel restrictions.

8. By way of illustration, the working paper focussed on three case studies: a) Iraq which was the object of sanctions imposed by the Security Council; b) Burundi which had been the object of sanctions imposed by neighbouring countries and c) Cuba which was and still is the object of sanctions imposed by a single country.

9. The economic sanctions against Iraq were imposed by the Security Council in its resolution 661 (1990) of 6 August 1990, followed by a comprehensive arms embargo imposed by its resolution 687 (1991). Over time, those sanctions have been criticized for inflicting huge suffering on the population, who after all – in the words of the UN Secretary-General himself

(S/2000/208) - were “not the intended targets of sanctions”. In his statement made at the Sub-Commission on 17 August 2000, the Observer of the United States of America called the part of the working paper relating to sanctions applied to Iraq “incorrect, biased and inflammatory” (E/CN.4/Sub.2/2000/SR.25, §37).

10. The economic sanctions on Burundi were imposed in August 1996 by the Governments of Tanzania, Kenya, Uganda, Ethiopia, Zaire, Rwanda and Namibia. In 1998, the Special Rapporteur on the human rights situation in Burundi stated in his report to the Commission on Human Rights that the sanctions were having a disastrous effect on the general population in Burundi (E/CN.4/1998/72, §§80-83). The sanctions were suspended on 23 January 1999.

11. The economic sanctions on Cuba were imposed by the United States of America in 1960 and were subsequently amended by the Cuban Democracy Act of 1992 and the Helms-Burton Act of 1996. These acts essentially ban all commercial ties between the United States and Cuba and severely impair the right of United States citizens to travel to, communicate with or carry out cultural exchanges with Cuba. Every year since 1992, the General Assembly has passed a resolution calling for an end to the embargo. The most recent resolution on this issue (A/67/4) was adopted on 13 November 2012 by 188 votes against 3, with 2 abstentions. Since the United States is the major regional economic power and the main source of new medicines and technologies, Cuba is subject to deprivations that impinge on its citizens’ human rights. Moreover, the US makes its own foreign trade policy extraterritorial, through a system of secondary sanctions which force third-party countries also into imposing an embargo on Cuba..

12. In conclusion, it maybe stated that it is not sufficient that the policy of the targeted country justifies the imposition of economic sanctions. There should also at least be the hope that the measures taken may lead to the desired result. Within regular intervals of not more than one year at the maximum, the effects of sanctions must be evaluated. The impact of sanctions on the enjoyment of human rights by the population should be taken prominently into account. If the desired results cannot be attained within a reasonable time period, the measures should be suspended. If not, the sanctions may not only lose their legitimacy, but may also become counter-productive.

Geneva, 5 April 2012