

# To what extent can the 1990 sanctions placed on Iraq be judged according to Humanitarian Law

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## To what extent can the 1990 sanctions placed on Iraq be judged according to Humanitarian Law?

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The use of sanctions as an instrument of foreign policy is a longstanding idea which has come under increasing scrutiny in the last decade, making it a controversial and relevant topic which is particularly worthy of investigation. This essay will briefly explain the importance of sanctions, along with their uses and failings. These will be evaluated in regard to the particular case study of the economic sanctions on Iraq during the 1990s, to illustrate the real problems of applying humanitarian law to sanctions. This essay will attempt to assess whether sanctions can be judged according to existing humanitarian law, and if this is not the case, what potential laws could be applied.

Before discussing the case study in detail, it is necessary to establish the definitions and terms that will be used in this essay, covering the main themes that will be examined. In this essay, the focus is placed upon economic sanctions and there is a good definition of these included in Amichai Cohen's article: '{Economic sanctions} involve the purposive threat or actual granting or withholding of economic indulgences, opportunities and benefits by one actor or group of actors in order to induce another actor or group of actors to change or adjust an internal or external policy.' (Cohen, 2009: 117) This is a broad definition, but covers the basic points. In the case of Iraq, the sanctions were negative-involving the withholding of economic benefits, were applied by a group of actors- the UN security council, and were intended to change the internal and external policies of Saddam Hussein. As in the case of this broad definition, the motives for using sanctions are varied. Not all of the motives for economic sanctions will be relevant to the case of Iraq, but it is important to gain a full understanding of the initial justification for using sanctions if we are to judge them according to any law.

There are many reasons for resorting to economic sanctions, rather than using alternatives such as diplomacy or outright military force. There has been a large increase in the use of economic sanctions since the ending of the Cold War- the UN Security Council imposed 9 sanctions in 4 years (O'Connell, 2002: 63) and the USA imposed 86 sanctions between 1996 and 2001 (Gottemoeller, 2007: 100.) This can be attributed to the fact that in an increasingly globalized world, 'state economies are extremely interdependent.' (Cohen, 2009) Due to this interdependence, states are more reliant on others for resources, and any limitations on these resources can have severe effects on the stability of a targeted state- more so than in the past, when states were more self-reliant. Modern warfare has also changed- 'conflict does not always take the form of conflict between two states or regular armies.' (Cohen, 2009) Increasingly, one of the parties involved can be a non-state actor, which forces states to consider different forms of warfare, such as economic pressure. If a non-state actor can no longer gain access to certain resources, they are less likely to propose a threat. Furthermore, many modern wars do not involve constant violent conflict- there can be many years of relative calm whilst a problem persists. Sanctions can address the problem without resorting to direct conflict. This touches on a long-standing reason to use sanctions: they are a middle ground between diplomacy and military operations which are less likely to end in a loss of human life.

From a humanitarian point of view, the decision to use economic sanctions might seem like a less damaging alternative to military action. However, there are many reasons why sanctions may prove ineffective and more dangerous for civilians than alternative policies, and this is why they are open to humanitarian criticisms. The first wave of sanctions following the cold war were largely comprehensive, targeting the whole economy of a state. These

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'bear a heavy moral burden, as they impact vulnerable groups- women, children, the poor and elderly- but leave the political elites largely untouched,' (Gottemoeller, 2007: 101) especially when directed against an authoritarian regime- such as Saddam Hussein's regime in Iraq. If a state chooses to direct sanctions against an authoritarian regime, it should be aware that civilians are likely to suffer. Thus if it can be shown that the Security Council were aware of this consequence when imposing comprehensive sanctions on Iraq, they can be heavily criticised under humanitarian laws to the right of life.

There are other reasons why economic sanctions might fail- states might turn to other non-participating states for trade, (Iraq managed to smuggle goods through Jordan during the sanctions) and they can create a sense of solidarity within the targeted country when perceived as an external threat. This effect would be particularly strong in an authoritarian regime such as Iraq, as the regime has control over the media and how people perceive events. Sanctions can also be costly to the states imposing them- this was clear in the case of Iraq as the sanctions began to fall apart when France, Russia and others 'were no longer willing to forego the economic benefits of participation with the Iraqi energy sector.' (Mastanuno, 2008: 177)

Thus, as has been discussed in this section, there are many reasons states choose to resort to economic sanctions and many reasons why they might not prove effective. From a humanitarian point of view, focused on the rights of the individual to life and freedom, sanctions can be considered more damaging than diplomacy but less so than military actions. However, once the consequences of sanctions play out, potentially with the massive loss of human life, the legitimacy of sanctions as a non-violent choice comes into question. To fully evaluate the humanitarian criticisms that can be applied to the use of economic sanctions, the next section of this essay will discuss in further detail the case of Iraq.

The sanctions that were placed on Iraq during the 1990s were the longest running, most comprehensive, and most controversial in modern history. They are often referred to as an example of the humanitarian problems that can arise from economic sanctions, and generally considered as a failure. It is for these reasons that this case study has been chosen, for although many would condemn the sanctions under humanitarian law, the situation is more complex than it appears.

On August 6<sup>th</sup>, 1990, the Security Council responded to the Iraqi invasion of Kuwait by adopting resolution 661, placing a 'blanket ban on all imports and exports except for supplies intended strictly for medical purposes, and, in humanitarian circumstances, foodstuffs.' (Normand, 1996) Although this exception appears to follow humanitarian norms, Normand, writing for the Middle East Report, argues that it is meaningless, as over 90% of Iraq's hard currency income (necessary to buy food/medical supplies) was cut due to sanctions. The sanctions also froze Iraqi assets worldwide and further resolutions prohibited air links. 'Resolution 687 stated that sanctions would end when Iraq terminated its weapons of mass destruction and permitted weapons inspectors to confirm this.' (O'Connell, 2002: 67) For the first 6 years, the sanctions cut Iraq off from all world trade and shut down its oil export, devastating the economy and society. Adding to the damage caused by Gulf war bombings, the sanctions helped to create a humanitarian crisis that resulted in hundreds of thousands of preventable deaths. UN studies in 1996 estimated a 'five-fold increase in child mortality due to hunger, disease and unsanitary conditions.' (Normand, 1996) The Iraqi health system, previously first-rate in the region, was crippled and infrastructure declined rapidly. This was clearly a humanitarian crisis, there can be no argument there. If the UN had continued to allow this to happen, then humanitarian law could judge the sanctions much more harshly, but in 1996 they introduced the oil-for-food program to attempt to ease the suffering of the people. This move showed that the UN was not willing to let civilians suffer for the sake of the sanctions, and thus did place some importance on human rights. The fact that the oil-for-food program 'descended into scandal' (Gottemoeller, 2007: 101) highlights the complete corruption of Iraqi oil traders, and it is difficult to blame the Security Council for this failure, unless it can be shown that they were aware of this possible consequence.

Despite the fact that the sanctions clearly caused much suffering and a humanitarian crisis, there are still those who argue that in some ways they were a success. It is important to provide a balanced debate, and if it can be shown that the sanctions achieved some good consequences, they should be judged less harshly under humanitarian law. In their article *Containing Iraq: Sanctions Worked*, Lopez and Cortright put forward the argument that the sanctions

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did much to erode Iraqi military capabilities, compelling them to accept inspections and monitoring, as well as make concessions on political disputes. The Sanctions also drastically reduced the revenue available to rebuild Iraqi defences after the Gulf War and blocked the entry of new technology and materials to build WMD (weapons of mass destruction.) They argue that although Baghdad received illicit funds from oil revenue, they were insufficient to finance a large-scale military development program. Overall, Lopez and Cortright produce a compelling argument that does highlight some of the positive effects of the sanctions. Despite the humanitarian crisis, the pressure of sanctions helped to disarm Iraq and prevent officials from building up a strong military which may have caused more humanitarian problems in the future. The question of whether more or less people would have suffered if Saddam was allowed to continue his policies is another matter. Thus having outlined the events and viewpoints on the economic sanctions of Iraq, this essay will go on to evaluate the case study in terms of humanitarian law.

Article 24 of the UN Charter provides a direct explanation as to why the economic sanctions on Iraq can potentially be judged according to humanitarian laws. The Article 'directs the Security Council to act in accordance with the purposes and principles of the United Nations,' (Normand, 1996) a fundamental aspect of which is the promotion of human rights. Thus, if the Council is subject to this limitation, it is bound to uphold humanitarian law. These laws include the right to life, health, food, education, and an adequate standard of living, and are enshrined in the United Nations Declaration of Human Rights, as well as numerous other international treaties -such as the International Covenant of Economic Social and Cultural Rights. These rights were all clearly jeopardised during the sanctions on Iraq. The laws of occupation have also been applied to economic sanctions, under which the occupying power has 'specific duties to care for the welfare of civilians in occupied territories.' (Cohen, 2009) By not protecting Iraqi civilians, the Security Council could be seen as violating this law. From these existing norms it would appear that the economic sanctions can easily be judged by humanitarian law and would be considered extremely illegitimate, due to the extreme amount of suffering caused.

Nevertheless, despite the multitudes of humanitarian laws that can be applied to economic sanctions, there are numerous problems which cast doubt upon the certainty of this application. Firstly, Humanitarian laws were not created for this specific purpose and are thus not attuned for the exact context. They are also subject to different interpretations and thus 'are not specific enough to be considered a comprehensive legal regulation of economic sanctions.' (Cohen, 2009) It is also difficult to argue that the imposition of sanctions can be considered a violation of human rights, because they do not usually have an intention to cause a violation. As O'Connell argues, 'the Security Council does not have the intention of eliminating or torturing the Iraqi people. If it did, or if the knowledge of unintended consequences rose to the level of intention, sanctions would have to be eliminated as a tool of law enforcement.' (O'Connell, 2002: 73) Thus, it can be quite difficult to apply existing humanitarian laws to the concept of economic sanctions, and as it is difficult to prove that they fall under the category of human rights, members of the Security Council have characterised sanctions as law enforcement tools. Accommodatingly, there are existing humanitarian laws applying to armed conflict which fit the law enforcement model more closely than the laws surrounding human rights.

There are two prevailing laws of armed conduct which are considered in regard to economic sanctions. These are the ideas of distinction, (those not taking part in the fight may not be targeted) and proportionality (prohibiting force which may cause civilian harm which is excessive in relation to military advantage.) According to Cohen, some scholars would suggest that the principle of distinction prohibits most economic sanctions, because they 'tend to be directed against civilians or the population as a whole.' (Cohen, 2009) Thus the comprehensive sanctions that the Security Council directed against Iraq could be considered illegal in relation to the principle of distinction, as they had a greater effect on civilians than specific individuals. However, Cohen goes on to argue that economic sanctions should not always be forbidden under this pretext, due to the fact that states would more easily resort to military action, causing even more severe consequences for civilians. This means that economic sanctions are potentially less damaging to civilians, thus following the principle of distinction.

Cohen would also argue that the principle of proportionality does not apply to economic sanctions, as 'the balance between the damage to the civilian population and the advantage gained by the imposing state is impossible to evaluate.' (Cohen, 2009) Hence, unlike military operations, all attempts to guess the exact damage or success of sanctions are entirely hypothetical and difficult to support. In the case of Iraq, the comprehensive sanctions could

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appear to violate the principle of proportionality, as the massive scale of civilian suffering may be considered excessive in proportion to the military gains. However, as we have previously discussed, there were important military gains brought on by the sanctions, which prevented Iraq from being a strong power in the region, which could have potentially caused much greater civilian suffering. Thus this principle proves difficult to predict in context, as Cohen argued. O'Connell would agree with Cohen, adding that there is still a distinction between sanctions and armed conflict- because 'sanctions target the economy and kill in other ways than physical force, and cannot be treated exactly like weapons.' (O'Connell, 2002: 74) Thus although the principles of distinction and proportionality appear to fit the context of economic sanctions more closely than human rights law, they are still not quite specific enough to be considered a firm application of humanitarian law.

Throughout this essay we have established the existing humanitarian laws that are often used to evaluate economic sanctions, and how they might judge the case of Iraq. Despite the multitude of laws which relate to the topic, it seems as if there is a lack of really specific humanitarian law used to control the use of economic sanctions, which is worrying due to the severe consequences sanctions can have, as we have seen in Iraq. Although the Security Council is bound to act in accordance with the principles of the UN, and generally attempts to adhere to humanitarian standards, the widespread use of comprehensive sanctions and their humanitarian effects highlight the need for more control and research into the effectiveness of sanctions. One aspect that has changed since the Iraq sanctions is the idea of 'smart sanctions.' The Security Council has attempted to create more specific sanctions, targeting specific individuals or firms, rather than whole populations. These 'meet a legal standard that balances the injury with the corresponding measure.' (O'Connell, 2002: 70) In other words, they adhere to the principles of proportionality and distinction. Although these smart sanctions are likely to be less effective, they should reduce humanitarian costs.

Cohen also suggests potential principles that relate specifically to the regulation of economic sanctions. These include the principle of severity- that sanctions should be limited if their effect is too harsh on civilian populations. This differs to proportionality in that it is not relative, but absolute. The second principle is effectiveness- sanctions would only be allowed if the targeting states are able to show that they are likely to be effective. The goals should be measurable and specific. The last principle is that of conditionality- the targeting state may impose sanctions only after it sets conditions which specifically relate to the sanction, and the opposing party has refused to comply with them. For example, a state may require that the party refrains from using oil for military actions, and if this condition is not met then sanctions may be placed on oil supplies. These principles are much more specific and still draw on more established humanitarian norms, making them easily applicable and identifiable. There is clearly a need for more limitations on economic sanctions, to reduce the suffering of civilians. The existing humanitarian laws do not fully cover the complexities of economic sanctions and thus can only partly be used to judge them. Thus, to answer the essay question, the sanctions in Iraq can only be judged in part by humanitarian law, as there are many overlapping principles and themes, but not completely, as there is still a need for more specific laws and limitations.

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