

**INTER -AGENCY STANDING COMMITTEE WORKING GROUP
XLI MEETING**

Geneva - 18/19 May 2000

Background Paper on Economic Sanctions and Human Rights

I. Outlining the problem

1. Under article 24, 39 and 41 of the United Nations Charter, 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 may call upon Member States to apply such measures in order to maintain or restore international peace and security. During the last decade, the Security Council has ordered economic sanctions against several countries. Such sanctions have drawn the attention of different United Nations human rights bodies and mechanisms to their possible impact on the enjoyment of human rights.

2. Analysis of this issue brought the Committee on Economic, Social and Cultural Rights¹ to the adoption of General Comment No 8 (1997) AThe relationship between economic sanctions and respect for economic, social and cultural rights@. That General Comment was based on several cases involving States parties to the International Covenant on Economic, Social and Cultural Rights.

3. The Committee found *inter alia* that:

X although it does not in any way call into question the necessity for economic sanctions in appropriate cases in accordance with Chapter VII of the Charter of the United Nations or other applicable international law, those provisions of the Charter that relate to human rights (Articles 1, 55 and 56) must still be considered to be fully applicable while imposing such sanctions;

X economic sanctions almost always have a dramatic impact on the rights recognized in the International Covenant on Economic, Social and Cultural Rights. They often cause significant disruption in the distribution of food, pharmaceuticals and sanitation supplies, jeopardize the quality of food and the availability of clean drinking water, severely interfere with the functioning of basic health and education systems, and undermine the right to work.

¹ The Committee on Economic, Social and Cultural Rights, composed of independent experts, has been established by ECOSOC to monitor the implementation of the International Covenant on Economic, Social and Cultural Rights.

X unintentionally, economic sanctions can lead to reinforcement of the power of oppressive élites, the emergence, almost invariably, of a black market and the generation of huge windfall profits for the privileged élites which manage it, enhancement of the control of the governing élites over the population at large, and restriction of opportunities to seek asylum or to manifest political opposition.

X while attempting to persuade the governing élite to conform to international law through applying political and economic pressure, the collateral infliction of suffering upon the most vulnerable groups must be fully recognized and taken into account.

X humanitarian exemptions to sanctions regimes established by the Security Council designed to permit the flow of essential goods and services destined for humanitarian purposes do not have this effect and are limited in scope.² The Committee underlines that they do not address, for example, the question of access to primary education, nor do they provide for repairs to infrastructures which are essential for the provision of clean water, adequate health care etc.

X the imposition of sanctions does not in any way nullify or diminish the human rights obligations of a State party under the International Covenant on Economic, Social and Cultural Rights. In times of particular hardship, those obligations assume greater practical importance. The State remains under an obligation to ensure the absence of discrimination in relation to the enjoyment of human rights, and to take all possible measures, including negotiations with other States and the international community, to reduce to a minimum the negative impact upon the rights of vulnerable groups within the society.

X when the international community takes upon itself even partial responsibility for the situation within a country (whether under Chapter VII of the Charter or otherwise), it also unavoidably assumes a responsibility to do all within its power to protect the economic, social and cultural rights of the affected population.

4. The Sub-Commission on the Promotion and Protection of Human Rights³ in its resolution 1997/35 A Adverse consequences of economic sanctions on the enjoyment of human rights@ pointed

² Ms Graça Machel, Special Rapporteur on the impact of armed conflict on children, stated: "humanitarian exemptions tend to be ambiguous and are interpreted arbitrarily and inconsistently. ... Delays, confusion and the denial of requests to import essential humanitarian goods cause resource shortages. ...[Their effects] inevitably fall most heavily on the poor" - Report to the General Assembly: Impact of Armed Conflict on Children (A/51/306, annex, para. 128).

A study AToward More Humane and Effective Sanctions Management: Enhancing the Capacity of the United Nations System, Executive Summary@, prepared at the request of the UNDHA on behalf of the IASC, 6 October 1997 (L. Minear, et al.), underlines that the review procedures applied under sanctions committees established by the Security Council "remain cumbersome and aid agencies still encounter difficulties in obtaining approval for exempted supplies. ... [The] committees neglect larger problems of commercial and governmental violations in the form of black-marketing, illicit trade, and corruption."

³ Former Sub-Commission on Prevention of Discrimination and Protection of Minorities.

out that economic sanctions almost seriously affect the innocent population, in particular the weak and the poor, especially women and children, (and...) have a tendency to aggravate the imbalances in income distribution already present in the countries concerned. The Sub-Commission also appealed to all States concerned to reconsider the adoption of economic sanctions, even if the legitimate goals pursued are not attained yet, if after a reasonable period of time they appear not to be bringing about the desired changes in policy [...]. In its decision 1999/110, the Sub-Commission reaffirmed that measures such as embargoes should be limited in time and in no way affect innocent civilian populations. In this context, the Sub-Commission underlined the need to respect the Charter of the United Nations, the Universal Declaration of Human Rights and the relevant provisions of the Geneva Conventions of 1949 and the two Additional Protocols thereto which prohibit the starvation of civilian populations and the destruction of what is indispensable to their survival.

II. A case study - the views of human rights bodies

5. To take a case study - a number of human rights treaty bodies and mechanisms have commented on the impact of economic sanctions on the enjoyment of human rights in Iraq.

X The Committee on Economic, Social and Cultural Rights recognized that the war with Iran and the conflict following Iraq's invasion of Kuwait caused the destruction of part of the country's infrastructure, brought considerable human suffering and produced a very difficult economic and social situation in Iraq. The Committee also noted that the living standard of a large section of the Iraqi population has been reduced to subsistence level since the imposition of the embargo. However, the Committee also reiterated that notwithstanding the effect of sanctions and blockades, the State party remains responsible to implement its obligations under the Covenant to the maximum of its available resources in accordance with article 2, paragraph 1 of the Covenant. The Committee, while aware that the embargo imposed on Iraq creates extremely difficult conditions with respect to the availability of food, medicines and medical articles, recommended that the Government take all necessary measures to address the needs of the population, and in particular those of the most vulnerable groups such as children, the elderly and nursing mothers.⁴

X The Committee on the Rights of the Child recognized that the economic embargo on Iraq has adversely affected the economy and many aspects of daily life, thereby impeding the full enjoyment by the State party's population, particularly children, of their rights to survival, health and education.⁵

X The Committee on the Elimination of Racial Discrimination recalled that other human rights treaty monitoring bodies, such as the Committee on Economic, Social and Cultural Rights (especially in its general comment No. 8 (1997)), the Committee on the Rights of the Child and the Human Rights Committee have recognized the adverse consequences of the economic sanctions on

⁴ C/C.12/1/Add.17: Concluding Observations of the Committee on Economic, Social and Cultural Rights: Iraq.

⁵ Concluding Observations CRC/C/15/Add.94.

the enjoyment of human rights by the civilian population and that, in its decision 1998/114, the Sub-Commission on Prevention of Discrimination and Protection of Minorities appealed to the international community, and to the Security-Council in particular, for the embargo provisions affecting the humanitarian situation of the population of Iraq to be lifted.⁶ The Committee also took note of a report of UNICEF Awhich describes the tragic situation of children, including the loss of many lives, as a result of economic sanctions@. The Committee joined the appeals to the international community and the United Nations, in particular, the Security Council for the lifting of Athose embargo provisions affecting, in particular, the humanitarian situation of the population of Iraq.@ The Committee finally stated that Adespite all the difficulties the Committee considers that the Government of Iraq maintains the competence for the implementation of its obligations under the terms of the Convention.⁷

X The Human Rights Committee noted that Athe effect of sanctions and blockades has been to cause suffering and death in Iraq, especially to children@ and reminded the Government of Iraq that Awhatever the difficulties, the State party remains responsible for implementing its obligations under the Covenant.⁸

X The Sub-Commission on the Promotion and Protection of Human Rights has referred on a number of occasions to the humanitarian/human rights situation in Iraq.⁹ In its decision 1999/110,¹⁰ the Sub-Commission took note with concern of reports on the considerable decline of the population standard of living in Iraq, including malnutrition which is endemic among young children, the catastrophic health situation leading to about 6,000 deaths a month among children under the age of five; the deterioration of infrastructure in the areas of drinking water, electricity and agriculture, which is causing serious harm to the everyday living conditions of the population; a serious deterioration of educational facilities and university teaching, which is leading to a decline in school enrolment and a return to illiteracy and intellectual isolation; unemployment, deficient training, and the lack of openings and prospects affecting the future of a whole generation. In this context, the Sub-Commission Appealed again to the international community, and to the Security Council in particular, for the embargo provisions affecting the humanitarian situation of the population of Iraq to be lifted.@ It also decided to Arge the international community and all Governments, including that of Iraq, to alleviate the suffering of the Iraqi population, in particular by facilitating the delivery of food, medical supplies and the wherewithal to meet their basic needs.@

X The former Special Rapporteur on the Situation of Human Rights in Iraq has *inter alia* stated that if the Government of Iraq had not waited five years to decide to accept the Aoil-for-food@

⁶ Concluding Observations, A/54/18, paras.337-361

⁷ Concluding Observations, A/54/18, paras.337-361

⁸ CCPR/C/79/Add.84 Concluding Observations of the Human Rights Committee: Iraq

⁹ See decision 1996/107 of 20 August 1996; decision 1997/119 of 28 August 1997, resolution 1997/35 of 28 August 1997, Decision 1998/114.

¹⁰ Sub-Commission Decision 1999/110: *Humanitarian Situation in Iraq*.

agreement, millions of innocent people would have avoided serious and prolonged suffering.¹¹ The Special Rapporteur has also stressed that AThe Government of Iraq has not taken full advantage of the food and health care resources available through the oil-for-food arrangements. For example the Government of Iraq has been ignoring the recommendations of the UN office of the Iraq programme and UNICEF to give priority to child nutrition and maternal health programmes@.¹²

III. Issues for Consideration

1. The concerns expressed by the United Nations human rights expert bodies and mechanisms suggest the need for consideration of the impact of economic sanctions on the enjoyment of human rights by the population in the country concerned.¹³ The basis for the discussion should be the fact that the international human rights instruments place upon governments and the international community a duty to strive to ensure realization of all basic rights, including the right to food, health, education and shelter. There is even a submission that these rights should be treated as non-derogable rights, namely rights which may not be suspended or reduced in any circumstances.

2. Observations made by the Committee on Economic Social and Cultural Rights in its General Comment No. 8 regarding criteria for the application of economic sanctions would appear to be particularly relevant. The Committee reiterated the responsibility of the State concerned to take steps "to the maximum of its available resources" to provide the greatest possible protection for the economic, social and cultural rights of each individual living within its jurisdiction. At the same time, however, it identified three obligations for the parties imposing sanctions:

3. human rights must be taken fully into account when designing an appropriate sanctions regime;

4. effective monitoring of the impact of sanctions should be undertaken throughout the period they are in force;

5. measures must be taken to respond to any disproportionate suffering experienced by vulnerable groups within the affected country.¹⁴

6. The Committee also stressed that while applying economic sanctions decisions should be taken to reduce the suffering of vulnerable groups or minimize other adverse consequences. This

¹¹ See A/54/466.

¹² See A/54/466.

¹³ See also Report of the Secretary-General, A/52/459, para. 66.

¹⁴ See the study mentioned in footnote 2.

can be achieved without jeopardizing the policy aim of sanctions.

7. Consequently, it is recommended that the competent bodies of the United Nations, including the Inter-Agency Standing Committee, while analyzing the economic sanctions regime ordered against Iraq (or *mutatis mutandis* in other specific cases) assess its impact on the enjoyment of human rights by the population of the country with a view to the development of policies and approaches designed to ensure compliance with international human rights norms. In this process, the following issues should be addressed:

8. the issue of the non-derogability of basic human rights;

9. the humanitarian situation and the implementation of human rights under the economic sanctions regime. The right to food, right to health, right to housing, right to education, the principle of interdependence and indivisibility of human rights, as reaffirmed by the Vienna Declaration and Programme of Action, should deserve particular attention. The situation of vulnerable groups, especially children, women and elderly should be specifically addressed;

10. the follow-up to the recent Secretary-General's report¹⁵ which deals *inter alia* with progress made in meeting the humanitarian needs of the Iraqi people;

11. the implementation of the Security Council resolution 1284 which should reduce the adverse impact of sanctions on the vulnerable groups and facilitate humanitarian assistance for Iraq;¹⁶

12. the compliance by the Government with the responsibility to use the maximum of its available resources and ensure equitable and timely distribution of supplies with a view to guaranteeing human rights, including adequate standard of living, to the population of the country. This includes cooperation by the Government in assessing the humanitarian needs of the population and its participation in a dialogue to find ways and means to redress human rights and humanitarian problems;

13. effective monitoring of human rights and humanitarian dimension of the impact of the economic sanctions, including the adoption of a human rights-based approach in the assessment of humanitarian needs and in the provision of assistance.

OHCHR would be willing to contribute to this endeavour and to the ongoing debate on the impact of economic sanctions on the enjoyment of human rights by the affected people.

¹⁵ Report of the Secretary-General pursuant to paragraphs 28 and 30 of resolution 1284 (1999) and paragraph 5 of resolution 1281(1999) S/2000/208, 10 March 2000.

¹⁶ Including the implementation of accelerated procedures for the approval of contracts for humanitarian supplies in Iraq which has begun as of 1 March 2000 (Security Council res. 1284 para 17).