

Towards a Definition of Economic Sanctions

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Scholars have long been groping for a definition of “economic sanctions” in order to distinguish the concept from other forms of international non-military coercion and identify the specific attributes of this complex human endeavour. Thus, various related terms have been used, which may or may not designate the same phenomenon: Economic aggression[1], economic warfare[2], economic coercion[3] and embargoes[4]. Regardless of whether the use of the term is always appropriate and whether all commentators do in fact mean the same thing, the expression ‘economic sanctions’ has increasingly been used since around 1990 as the generic label for various unilateral and multilateral measures of deprivation imposed on individual national economies. We will maintain this usage in order to avoid confusion.

The expression “economic sanctions” is to be distinguished from limited forms of adverse measures, such as trade countermeasures permitted under the Statute of the WTO, symbolic sanctions that may include a material component but are neither intended nor foreseen to impair general economic life, diplomatic sanctions and arms embargoes.

After reviewing various approaches, Margaret Doxey, an eminent authority in the field of economic sanctions defines *international* sanctions:

as penalties threatened or imposed as a *declared consequence* of the *target’s failure to observe* international standards or international obligations[5]. (emphasis added)

Barry E. Carter defines economic sanctions as

coercive economic measures taken against one or more countries to attempt *to force a change in policies*, or at least to demonstrate the sanctioning country’s opinion of another’s policies[6]. (emphasis added)

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- [1] D.W. Greig, “International Law” (textbook), Butterworths & Co., London, 2d. edition (1976), at 473
- [2] John and Karl Mueller, “Sanctions of Mass Destruction”, *Foreign Affairs* 78 (1999), at 48, write: “It might help if severe economic sanctions were designated by the older label of ‘economic warfare’. In the past wars economic embargoes cause huge number of deaths.”; Geoff Simons, “Imposing Economic Sanctions: Legal Remedy or Genocidal Tool?”, Pluto Press, London (1999), at 4, views economic sanctions as “means of economic warfare, a concomitant to naked violence”. See also Medicott, I. (*The Economic Blockade*, 17 (1959) cited in W. Mallison, Jr. *Studies in the Law of Naval Warfare: Submarines in General and Limited Wars* 60 (1966); Allen, *State Trading and Economic Warfare*, 24 *Law and Contemporary Problems* 256 (1959); Gunnar Adler-Karlsson, “Western Economic Warfare 1947-1967: A Case Study in Foreign Economic Policy”, Almquist & Wiksell, Stockholm (1968); Seidl-Hohenveldern, “International Economic Law”, Kluwer Law International, The Hague (1999), at 161
- [3] For example Bowett, “International Law and Economic Coercion”, in *Economic Coercion and the New International Economic Order*, Richard B. Lillich (ed.), The Michie Company, Charlottesville (1976); also UNGA Resolution 52/181 (1998)
- [4] For example Morin and Miles, “The Health Effects of Economic Sanctions and Embargoes: The Role of Health Professionals”, *Annals of Internal Medicine*, 132 (2000) at 158-161; see also UN Human Rights Commission, *Resolution on the human rights and humanitarian consequences of sanctions, including embargoes* (2000)
- [5] Margaret P. Doxey, *International Sanctions in Contemporary Perspective*, 2d edition, (1996), at 9
- [6] Barry E. Carter, “International Economic Sanctions: Improving the Haphazard U.S. Legal Regime”, 75 *Cal. L. Rev.* 1162, 1166. This view of economic sanctions is often encountered. See also Kulesa & Starck, “Peace through sanctions?”, *Development and Peace Foundation, Policy Paper No. 7* (1998) (“[Economic] sanctions are not punishments, they are international measures designed to bend wills...”)

The above definitions rest on the assumption that international sanctions constitute a “declared consequence” of a “target’s failure to observe international standards or [...] obligations” or have the purpose to “force a change in policies” of the targeted country’s government[7].

Economic sanctions are not, however, a causal effect (“consequence”) of a “target’s failure to observe” international standards. At most they may represent a discretionary *response* prompted, though not caused, by the target’s conduct. But even such link cannot be presumed. How can an external observer be certain as to the real motives of the parties imposing economic sanctions? Suppose, for example, that a trade embargo against a nation were imposed in order to impoverish that nation so that its natural resources and labour could be seized by multinational corporations, or simply to prevent its economic ascendancy, but that the declared goal would be to induce an improvement of the human rights record of the regime. The measures would be designated as “economic sanctions” but they would not in fact constitute a “penalty” nor have a coercive purpose. It is not always easy to determine the true motives of those who adopt economic sanctions. Charges have indeed been made regarding the hidden agenda of various sanctions regimes, including the regime of the Coordinating Committee on Multilateral Export Controls (COCOM) imposed by the West against the Socialist Bloc[8], the US trade embargo against Cuba and the comprehensive economic sanctions by the UN against Iraq. In his “User’s Guide to Economic Sanctions”, Robert P. O’Quinn of the Heritage Foundation asks whether “economic sanctions [are] an effective way to achieve U.S. foreign policy objectives” and “[w]hat strategic doctrine should govern the use of economic sanctions to ensure that they actually advance U.S. interests”. He adds that economic sanctions are “important strategic weapons in the policy arsenal. Like other strategic weapons, however, they must be used with extreme care lest American companies and their workers, suppliers and shareholders become friendly-fire casualties”[9]. Here economic sanctions are described as tools to achieve a state’s foreign policy objectives rather than means to ensure respect for international standards.

Doxey concedes that governments, “for obvious reasons [...] prefer to assert ethical grounds for their foreign policy behaviour. They will say that they are imposing sanctions to defend legitimate, worthy and general interests rather than to advance particular interests of their own.”[10].

Another difficulty in determining the true purpose of economic sanctions imposed by the UN Security Council is that its individual members may each have their own motives for supporting the measures. Some might pursue their “foreign policy objectives” while others might lend their support in exchange for some benefit or to avoid retribution by powerful states determined to impose or maintain the sanctions at any cost.

Hufbauer and Oegg, limiting the definition to operational dimensions, suggest that economic sanctions are

deliberate, government-inspired withdrawal, or threat of withdrawal, of customary trade and financial relations[11].

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- [7] Doxey, *supra n. 5*, at 54 lists goals of international sanctions under the following eight headings: Deterrence, compliance, punishment, destabilization, limitation of conflict, solidarity, symbolism and signalling. She does not include as possible or potential goals: Containment, impoverishment of a nation and subjugation.
- [8] B. Grossfeld & A. Junker, *Das COCOM im internationalen Wirtschaftsrecht* (1990); also Gunnar Adler-Karlsson, “Western Economic Warfare 1947-1967”, Uppsala (1968)
- [9] Robert P. O’Quinn, Policy Analyst, The Heritage Foundation Backgrounder No. 1126 of 25 June 1997. <http://www.heritage.org/library/categories/trade/bg1126.html>
- [10] Doxey, *supra n. 5*, at 10
- [11] Garry Hufbauer and Barbara Oegg, “Economic Sanctions”, *Quill magazine*, Jan-Feb. 1999, posted on FACS Net website

Such definition has the advantage of resting on observable facts rather than on an interpretation of motives. This definition tracks Article 41 of the UN Charter, the legal foundation upon which UN economic sanctions are based. Article 41 does not refer to “economic sanctions” at all. It merely lists a non-exhaustive list of operational aspects of such measures, namely “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.”

Towards an objective definition of economic sanctions

While scholars and politicians may dispute the desirability, effectiveness, impact, legality, legitimacy and morality of economic sanctions, there is no dispute that *economic*[12] sanctions’ immediate, as distinct from their ultimate, purpose is to cause economic hardship in the targeted territory[13]. Emphasising the injurious purpose of economic sanctions, Hans-Peter Gasser of the International Committee of the Red Cross writes:

To speak of mere ‘regrettable side-effects’ of sanctions is inadequate in view of the severe and lasting negative impact on civil society. Such negative effects on the civilian population are of course intended by those who impose economic sanctions[14].

When economic sanctions are imposed with the declared goal to repel military occupation, compel respect for human rights or induce a change of government, they constitute *coercive* measures. Coercion requires the infliction of pressure. This pressure is wrought by causing severe shortages within a country, resulting in individual deprivation. When this deprivation attains an unbearable threshold of pain, the population is expected to rise up and demand from its government compliance with external demands. The plight of the general population is therefore a key and necessary feature of coercive economic sanctions[15]. The detailed mechanism by which the disruption of trade and/or financial relations is expected to transform itself into policy change is generally and conveniently glossed over[16], probably

[12] We distinguish “economic “ sanctions from coercive measures inflicted on individual persons or selected groups.

[13] Doxey, *supra n. 5* at 116, concurs: “[E]conomic and other sanctions which are intended to have a significant impact must produce economic hardship which it is hoped will translate into political compliance”; further (at 55) she writes: “*It is by inflicting pain* through diplomatic, cultural, communications or economic sanctions, or through some combination thereof, that compliance is sought.” (emphasis added); Adam Winkler, *Just Sanctions*, 21 Human Rights Quarterly (1999) (p. 136), similarly, regards the “definite characteristic of economic sanctions” the fact that they are “specifically intended to cause economic harm to another state.”

[14] Hans-Peter Gasser, “Collective Economic Sanctions and International Humanitarian Law”, *Zeitschrift für ausländischess öffentliches Recht und Völkerrecht*, 56 (1996), at 874

[15] At this conceptual level there exists a similarity between economic sanctions and international terrorism as defined in U.S. legal code, Title 18 § 2331

[16] Statements, such as the following, are rare: “We realise that the human consequences [of the sanctions on Iraq] are considerable, but we see no reason to change our sanctions policy. If the Iraqi people want to get rid of Hussein, they should do something about it themselves” (Gitte Seeburg, Foreign Policy Spokeswoman for the Danish Conservative Party, at <http://www.danirak.dk/english/eyes.html>). More often the mechanism is alluded to, as when Paul Lewis wrote in New York Times on 22 March 1991 (“UN Survey Calls Iraq’s War Damage Near-Apocalyptic”): “Ever since the trade embargo was imposed...the United States has argued against any premature relaxation in the belief that by making life uncomfortable for the Iraqi people it will eventually encourage them to remove President Saddam Hussein from power.” (cited by Ramsey Clark, *The Fire This Time: U.S. War Crimes in the Gulf*, Thunder’s Mouth Press, New York, (1992), p. 86). More bluntly William Webster, at that time CIA director, linked “civilian pain to political gain” in his testimony before the House Armed Services Committee of the U.S. Congress on 5 December 1990: “Our judgment has been and continues to be that there is no assurance or guarantee that economic hardships will...lead to internal unrest that would threaten [Saddam Hussein’s] regime.” (cited by Peter L. Pellett. “Sanctions, Food, Nutrition, and Health in Iraq.” In *Iraq under siege: The deadly impact of sanctions and war*, edited by Anthony Arnove, 151-68. London: Pluto Press, 2000. p. 152).

because it would expose the instrumental use of civilian pain caused by economic sanctions. When economic sanctions are imposed for other purposes, such as preventing a nation from becoming an economic competitor in the world market, the ultimate purpose is not coercitive, but the deprivation, as means to an end, is equally intended.

The nexus between “civilian pain and political gain” is acknowledged *in petto* by scholars favourable to economic sanctions and indirectly even by the permanent members of the Security Council[17]. Insulated from world public opinion, U.S. politicians have been less restrained in expressing this nexus. In debates surrounding the sanctions on Iraq in the U.S. Congress and in the House of Representatives between 10 and 13 January 1991, U.S. politicians expressed their expectation that the sanctions would “create economic pain”[18], “strangle the Iraqi economy”[19], “crippl[e]”[20] or “eviscerat[e]”[21] it or “inflict sufficient pain that the Iraqi people will overthr[o]w Saddam”[22]. The use of terms derived from bodily assault, such as “causing pain,” “crippling,” “strangling,” and “eviscerating”, suggest the existence of an intent to cause severe adverse consequences.

Definitions of injurious coercive conduct, such as torture, typically encompass a number of objective elements: The existence of one or several perpetrators, the existence of one or several victims, the nature of the pain being inflicted and an intent to coerce by imposing pain[23]. Torture could be practised for various *ultimate* purposes. But in order to determine that a particular conduct amounts to torture, there is no need to determine that conduct’s *ultimate* purpose. As economic sanctions are an injurious, often coercive, measure, we propose a similar definitional approach. Accordingly we suggest that economic sanctions be defined as

Coordinated restrictions on trade and/or financial transactions intended to impair economic life within a given territory.

The above definition is independent of the question whether economic sanctions are lawful or unlawful, ethical or unethical. It does not require that the ultimate purpose of the measures be determined and applies to any authors, be they private entities, a state or an international organisation[24].

The definition does not need much explanation. One clarification may be warranted. It is commonly held that economic sanctions target “states” or “governments”. Yet such language

[17] David Cortright and George A. Lopez, (“The Sanctions Decade”, Lynne Rienner Publishers, Boulder, Colorado (2000)) at 26, acknowledge this nexus but suggest that the “art of sanctions statecraft lies in applying sanctions that are sufficiently forceful [...] while avoiding *severe* humanitarian impacts” (emphasis added), in other words finding an optimal level of civilian pain. On 13 April 1995, the five permanent members of the Security Council sent to the President of the Council a non-paper entitled “Humanitarian impact of sanctions” (UN Document No. S/1995/300 and Annex). In this non-paper, the authors suggest that “future sanctions regime should be directed to minimise unintended adverse side-effects of sanctions on the most vulnerable segments of targeted countries.” This sloppily worded and obfuscatory text reveals nevertheless the awareness of its authors of the injurious nature of past sanctions regimes and their recognition that sanctions cannot but harm civilian populations (Only “unintended side-effects” affecting “the most vulnerable segments” of the population should be “minimised”).

[18] Cong. Rec. S171 (daily ed. Jan. 11, 1991) (statement of Sen. Daschle)

[19] Cong. Rec. S236 (daily ed. Jan. 11, 1991), (statement of Sen. Metzenbaum)

[20] Cong. Rec. S393 (daily ed. Jan. 12, 1991), (statement of Sen. Rockefeller)

[21] Cong. Rec. H281 (daily ed. Jan. 11, 1991), (statement of Rep. Synar)

[22] Cong. Rec. S374 (daily ed. Jan. 12, 1991), (statement of Sen. Pell)

[23] See, for example, Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by UN GA Resolution 39/46 of 10 December 1984

[24] The approach is similar to that followed by Jordan J. Paust (“Private Measures of Sanctions.” In *Legal Aspects of International Terrorism*, edited by Alona E. Evans and John F. Murphy, 575-. Lexington Books, Lexington, 1978) who provides a definition of international terrorism that does not determine whether “terrorism used in a given situation is permissible or impermissible.” (p. 577)

obfuscates the reality of these measures. Economic sanctions do not target a population's authorities, as such. Their immediate, as distinct from their ultimate, purpose is to impair the functioning of the economy in the targeted territory as a totality or more accurately, which inevitably affects the material well-being of the population residing in that territory, such as access to income-generating work, to goods and to services.

Conclusion

The ultimate (and declared) purpose of economic sanctions could well be the re-establishment of international peace and security, the prevention of genocide or the restoration of the rule of law, or (the undeclared) impoverishment of a nation and its subjugation to external rule. The means by which economic sanctions attempt to achieve their declared ultimate purpose, often a change in government policy, is to severely impair the access of the population in the targeted territory to work, goods and services with the mostly unstated expectation that the suffering of that population would translate into pressure on the government and ultimately into compliance with the external demands.

An objective definition of economic sanctions permits to obviate the need to ascertain the ultimate purpose of the sanctions. The proposed definition also helps to reveal the generally hidden fact that such measures require the instrumentalization of civilian pain for political gains.

Are measures that deliberately impair the well-being of a civilian population compatible with ethical or legal norms, including human rights? If so, when and to what extent is it permissible for states or international organisations to collectively coerce a civilian population? What legal claims can innocent victims of economic sanctions make under international and human rights law in order to obtain reparation? These issues have not been addressed yet by major human rights organisations nor by the academic community, let alone by the community of states within the United Nations [25].

END

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[25] In his article "Legal Boundaries of UN Sanctions", *The International Journal of Human Rights*, Vol. 7, Number 4, Winter 2003, pp. 1-50, present author has attempted to address some of these issues.