Humanitarianism and the Quest for Smarter Sanctions

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Abstract

Just as economic sanctions appear to have become the coercive instrument of choice for the United Nations in the decade since the Gulf War, there has been increasing concern as to their effect — whether upon the civilian population within target states or upon the economic interests of historic trading partners. Such concerns have now found their way into policy-making within the United Nations and elsewhere, leading to the development of a new orthodoxy: the future of sanctions lies in their being made 'smart', 'targeted' and hedged with 'humanitarian exemptions'. This article seeks to outline the strands of this new policy initiative and evaluate its implications. It is argued that, given the continued uncertainty as to the effectiveness of sanctions as a coercive tool, the argument for smartening sanctions seems to rest primarily upon the claim that they are necessarily more 'humane'. It seems, furthermore, that the framework within which this idea of 'humanity' is to be deployed is that of humanitarian law. This, however, leads to the central problem, namely, that given the broad discretion assumed by the Security Council in the choice of measures to be adopted under Chapter VII, the role of humanitarian arguments will invariably be confined to one of ameliorating adverse consequences, rather than of limiting the capacity to impose those measures in the first place. In such a guise, they act less as a constraint upon the capacity of the Security Council to impose sanctions, and more as a vehicle for justifying their deployment.

The response of the United Nations to the Iraqi invasion of Kuwait is regarded by many as marking the dawn of a new era for the Organization as regards its role in maintaining international peace and security. A central feature of this apparent regeneration has been the deployment of economic sanctions under Article 41 of the UN Charter. The use of sanctions has, of course, been a continuing feature of international relations for many centuries, and in one form or another they continue to be deployed on a unilateral basis for a variety of strategic ends. There is nothing new here. But the Gulf War does seem to have represented a turning point as regards the deployment of collective sanctions under auspices of the United Nations (and under its influence, other regional organizations). In the period prior to 1990, the Security

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Council had imposed sanctions in only two cases — against Southern Rhodesia in 1965[1] and South Africa in 1977.[2] Since that time, sanctions of one form or another have been directed against Iraq,[3] Libya,[4] the former Yugoslavia (originally the SFRY[5] and then the FRY[6] and the Bosnian Serb Party), the Federal Republic of Yugoslavia,[7] Haiti,[8] Somalia,[9] Angola,[10] Rwanda,[11] Liberia,[12] Sudan,[13] Sierra Leone,[14] Cambodia[15] Afghanistan,[16] and Eritrea and Ethiopia.[17] Many of these regimes remain in place today.

Apart from observing the evident ease with which the necessary political will is now marshalled within the Security Council, the rising incidence of resort to economic measures (particularly in contrast to measures of a military nature) perhaps tells us something about the nature of the UN's system for collective security, or at least attitudes towards it. It may, for example, tell a story about a maturing of the system and the development of its ability to respond flexibly to situations which threaten international peace, and in which armed force remains simply one of many options. It may, equally, tell a story about the general unpalatability of armed force — whether from a political or humanitarian standpoint — and the relative acceptability of measures that do not involve deliberate killing.[18] Alternatively, it may simply tell of a more generalized tendency to understand issues of national or international security in economic, rather than military terms, with international battle lines increasingly drawn in terms of markets and trade, rather than tanks and troops.[19] However it is viewed, the current situation seems to be one in which UN-imposed coercive

[1] SC Res. 216 (1965); 217 (1965); 221 (1966); 232 (1966); 253 (1968); 460 (1979).

[2] SC Res. 418 (1977); 473 (1980); 558 (1984); 591 (1986); 919 (1994). Earlier measures were authorized by the Security Council in Resolutions 181 (1963) and 182 (1963), but these were regarded as voluntary.

[3] Sanctions were first imposed in SC Res. 661 (1990). This regime was further modified and developed in SC Res. 665 (1990); 666 (1990); 670 (1990); 687 (1991); 700 (1991); 706 (1991); 712 (1991); 715 (1991); 778 (1992); 986 (1995) 1051 (1996); 1111 (1997); 1129 (1997); 1137 (1997); 1153 (1998); 1175 (1998); 1210 (1998); 1242 (1999); 1281 (1999); 1302 (2000).

[4] SC Res. 748 (1992); 1192 (1998).

[5] SC Res. 713 (1991), 724 (1991); 727 (1992); 1021 (1995).

[6] SC Res. 757 (1992); 760 (1992); 787 (1992); 820 (1993); 924 (1994); 943 (1994); 1022 (1995); 1074 (1996).

[7] SC Res. 1160 (1988); 1244 (1999).

[8] SC Res. 841 (1993); 861 (1993); 873 (1993); 917 (1994); 944 (1994).

[9] SC Res. 733 (1992); 751 (1992); 767 (1992); 794 (1992).

[10] SC Res. 864 (1993); 976 (1995); 1055 (1996); 1075 (1996); 1127 (1997); 1173 (1998); 1221 (1999); 1237 (1999); 1295 (2000).

[11] SC Res. 918 (1994); 997 (1995); 1011 (1995).

[12] SC Res. 788 (1992); 813 (1993); 1071 (1996); 1343 (2001).

[13] SC Res. 1054 (1996); 1070 (1996).

[14] SC Res. 1132 (1997), 1171 (1998), 1306 (2000).

[15] SC Res. 792 (1992).

[16] SC Res. 1267 (1999); 1333 (2000).

[17] SC Res. 1298 (2000).

[18] Cf., Conforti, 'Non-Coercive Sanctions in the United Nations Charter: Some Lessons from the Gulf War', 2 *EJIL* (1991) 110.

[19] See, Kennedy, 'Putting the Politics back into International Politics', 9 *Finn. YIL* (1998) 17.

economic measures are no longer isolated or exceptional but rather commonplace, and that this routinization has tended to bring with it a broad acceptance of the necessity and utility of sanctions as part of the new programme of global policing spearheaded by the United Nations.

The evident sense of fulfilment engendered by the Security Council's discovery of an enhanced capacity to respond to international crises has, however, been soured by an increasing anxiety not only as to the effectiveness of many of the measures adopted, but also as to their impact upon the civilian population of target states and upon the economies of third states.[20] It has been widely observed, for example, that in the case of Iraq the imposition of sanctions was accompanied by a sharp deterioration of the socio-economic welfare of the general population. The degradation of the country's civilian infrastructure led, among other things, to a decline in food production and water quality, a rise in vaccine-preventable disease, malaria, typhoid and tuberculosis, and an increased incidence of chronic malnutrition[21] and infant mortality.[22] In fact the Security Council panel appointed to monitor the humanitarian situation in Iraq was led to conclude in 1999 that:

> In marked contrast to the prevailing situation prior to the events of 1990–1991, the infant mortality rates in Iraq today are among the highest in the world, low infant birth weight affects at least 23 per cent of all births, chronic malnutrition affects every fourth child under five years of age, only 41 per cent of the population have regular access to clean water, 83 per cent of schools need substantial repairs. The ICRC states that the Iraqi health-care system is today in a decrepit state. UNDP calculates that it would take 7 billion US dollars to rehabilitate the power sector country-wide to its 1990 capacity.[23]

In addition to the perceived humanitarian costs of economic sanctions, it has also been noted that the economies of those states with traditional trading links with target regimes have suffered financially as a result of the interruption of trading activity consequent to the imposition of sanctions. As a result of the embargoes imposed upon Iraq and the Federal Republic of Yugoslavia, for example, it was claimed that the Bulgarian economy suffered a loss of more than $10 billion by April 2000.[24] Whether or not such figures may be regarded as exaggerated, there is little doubt as to the existence of the problem.

Despite claims that many of these problems were either avoidable or that, in the case of Iraq, responsibility lay at the door of the government itself, the United Nations

[20] It has frequently been observed, furthermore, that target elites have often benefited from windfall profits in the management of smuggling activities and by control of the black market.

[21] FAO/WFP/WHO, 'Assessment of Food and Nutrition Situation in Iraq' (May/June 2000) notes that 800,000 children under five are chronically malnourished and there are high levels of anaemia in school children. two million children were registered as suffering from protein, calorie and vitamin-related malnutrition in 1998.

[22] The infant mortality rate has risen from 47 in the period between 1984–89 to 108 in the period between 1994–1999. *Child and Maternal Mortality Survey*, UNICEF (1999).

[23] 'Report of the Second Panel Established Pursuant to the Note by the President of the Security Council of 30 January 1990 (S/1999/100), Concerning the Current Humanitarian Situation in Iraq', S/1999/346, Annex II (30 March 1999).

[24] Sotirov (Bulgaria), UN doc. S/PV.4128, 17 April 2000, at 35.

has never quite avoided the charge that sanctions contributed significantly to the deterioration of the situation. In his Supplement to the Agenda for Peace in 1995, for example, the Secretary-General admitted that:

> Sanctions, as is generally recognized, are a blunt instrument. They raise the ethical question of whether suffering inflicted on vulnerable groups in the target country is a legitimate means of exerting pressure on political leaders whose behaviour is unlikely to be affected by the plight of their subjects. Sanctions also always have unintended or unwanted effects. They can complicate the work of humanitarian agencies by denying them certain categories of supplies and by obliging them to go through arduous procedures to obtain the necessary exemptions. They can conflict with the development objectives of the Organization and do long-term damage to the productive capacity of the target country. They can have a severe effect on other countries that are neighbours or major economic partners of the target country. They can also defeat their own purpose by provoking a patriotic response against the international community, symbolized by the United Nations, and by rallying the population behind the leaders whose behaviour the sanctions are intended to modify.[25]

Damning as these observations might seem to be, the phraseology employed by the Secretary-General is significant. Rather than these negative consequences being regarded as a natural facet of the regimes imposed, they are characterized instead as the 'unintended' or 'unwanted consequences'[26] of those regimes. Even if foreseeable, they are not intentional and should be regarded rather as mere 'collateral damage'.[27] The answer that has recommended itself to the United Nations, therefore, has been for the Council to 'smarten' sanctions, to 'target' them, and make provision for the alleviation of their 'side-effects'.[28] In case of the latter, this has been seen to involve, in particular, facilitating the work of humanitarian agencies and taking steps to ensure that requests for assistance under Article 50 are effectively met.[29]

1 General Considerations

On the face of it, efforts to 'smarten' sanctions may be thought somewhat self-defeating. After all, if the purpose of sanctions is to coerce the target state, lessening the sharpness of that coercion may be thought to lessen the chances of their success. It might also be argued that targeting sanctions may actually increase the human cost by encouraging their deployment in cases where their utility is only

[25] Supplement to an Agenda for Peace, (1995), para. 70.

[26] Cf also, Under-Secretary-General for Political Affairs Kieran Prendergast, UN Doc. S/PV.4128, at 4.

[27] Cf. Dissenting Opinion of Judge Higgins, *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons*, ICJ Reports (1996) 225, at para. 22 ('Collateral injury in respect of [conventional] weapons has always been accepted as not constituting "intent", provided always that the requirements of proportionality are met.').

[28] See e.g., Address of the Secretary-General Kofi Annan to the International Peace Academy Seminar, NY, Press Release SG/SM/7360. For an elaboration of principles in this respect see, Reisman and Stevick, 'The Applicability of International Law Standards to United Nations Economic Sanctions Programmes', 9 *EJIL* (1998) 86.

[29] Supplement to the Agenda for Peace, at paras 71–73. Article 50 allows Member States confronted with 'special economic problems' arising from the carrying out of preventive or enforcement measures taken by the Security Council to 'consult the Security Council with regard to a solution of those problems'.

marginal,[30] and by increasing the length of time required in order for their full effects to be felt. Such arguments, however, have gained little credence with policy makers in the West. As the Swiss Ambassador Jeker in his Chairman's Report at the Interlaken II conference observed:

> practitioners and analysts agree that better-targeting of [sanctions] would increase their effectiveness, while minimising the negative humanitarian impact often experienced by large segments of civilian populations as a result of comprehensive sanctions regimes.[31]

Targeted sanctions are, in other words, a policy-maker's dream: they are not only right, but also more effective.[32] They are, as Koskenniemi might put it, the methodological substantiation of the otherwise counterpoised demands for order and justice.[33]

Two initial observations should be made with regard to the nature of this claim. First of all, the general debate as to the effectiveness of economic sanctions remains largely unresolved.[34] Not only is it apparent that the criteria for success or failure will depend upon the sanctioner's expectations as regards the regime in question (whether, for example, they are symbolic, punitive, or coercive in aim), and that those expectations will frequently remain unclear or ill-articulated, and may indeed change over time. But it is also apparent that if the desired objective is a modification in the behaviour of the target regime, any claim for success will remain contingent upon a debatable causality (that the change in behaviour was procured directly enough by the measures taken). Such an evaluation is particularly difficult in cases where other measures — such as the use of force — are also threatened or employed.

The second observation concerns the expectations laid at the door of targeted sanctions. To suggest that targeting will fulfil both the need for effectiveness and humanity only seems to be credible to the extent that the terms of evaluation are regarded as being contained within the activity itself. Targeting may be said to be more effective only to the extent that 'hitting' the target is better than 'missing' it, and more humane only as far as the non-infliction of harm on another can be regarded as such. In either case, it ignores the broader contextual factors that inform general understandings of what is either 'effective' or 'humane'. Its primary rationale lies in the idea that a sharp line should be drawn between the target in question and other non-targets, and in the process any necessary relationship between them is

[30] Cf. M. Waltzer, *Just and Unjust Wars* (1980) 274–278 arguing that advocates of limited nuclear war changed the debate over nuclear deterrence by transforming the 'bluff' into a plausible option.

[31] 'Chairman's Report', Interlaken 2 (1999) 5.

[32] It has been asserted that a humane sanctions policy would have more legitimacy and support, which itself would contribute to its effectiveness. See Burciul, 'United Nations Sanctions: Policy Options for Canada', Canadian Dept. Foreign Affairs and International Trade (1998).

[33] On this see Koskenniemi, 'The Police in the Temple. Order, Justice and the UN: A Dialectical View', 6 *EJIL* (1995) 325.

[34] See generally, G. Hufbauer, J. Schott and K. Elliott, *Economic Sanctions Reconsidered: History and Current Policy* (2nd ed. 1990); Dahti-Gibson, Davis and Radcliff, 'On the Determinants of the Success of Economic Sanctions: An Empirical Analysis', 41 *Am.J.Pol.Sc.* (1997) 608; Pape, 'Why Economic Sanctions do not Work', 22 *International Security* (1997) 90; Hugbauer and Winston, 'Smarter Sanctions: Updating the Economic Weapon', 7 *Nat.Strat.Rep.* (1997) 1.

necessarily occluded or obscured. Nevertheless, even if it can plausibly be maintained that harming the civilian population is unlikely to promote the effectiveness of sanctions (a proposition which is usually explained by reference to the characterization of target regimes as generally authoritarian), it is barely credible to suggest that in directing measures against the government, the civilian population will be immunized from harmful effects. Whether or not the benefits are thereby to be regarded simply in comparative terms (targeted sanctions being better than comprehensive sanctions), the point is that once one accepts the premise of targeting as a strategic tool, there is also a tendency to accept the limitations implicit in that activity for purposes of evaluating it as a coercive strategy.

2 Sanitizing Sanctions in UN Practice

Taking the practice of the Security Council as a whole, it might be said that the Council has endeavoured to 'smarten' or 'target' sanctions in two different ways: either by limiting the scope of the regime or by introducing 'humanitarian exemptions' so as to alleviate their harmful effects. In the first case, since objections as to the humanitarian effects of sanctions regimes have tended to focus upon the largely 'comprehensive' regimes such as those imposed upon Iraq and the FRY, the Security Council recently seems to have preferred the adoption of either individual-or sector-specific measures.[35] In the case of Eritrea and Ethiopia, for example, sanctions have been limited to the supply of military *matériel* or the training of combatants, that of Sierra Leone to an embargo on oil and arms and restrictions on the travel of members of the military junta, and that of Sudan to a flight ban and restrictions on travel and diplomatic discourse. Even if residual concerns remain as to the purpose or effect of such regimes,[36] they have avoided the same level of criticism on grounds of their humanitarian cost.[37] It is arguable, however, that the primary consideration has always been, and remains, a concern to tailor the measures by reference to the objectives to be achieved. For example, in cases where the objective seems to be one of limiting the level of violence during a period of armed conflict, an embargo on the supply of military hardware may well be all that can reasonably be justified in the circumstances. If, by contrast, the Council is seeking to coerce a regime into a substantial change in its behaviour, a limited embargo may be regarded as at best ineffective and at worst counter-productive.[38] In any case, it does seem apparent that the Council will not invariably confine itself to limited objectives, and that the

[35] See, Hasmy (Malaysia), UN doc. S/PV.4128, 17 April 2000, at 13.

[36] E.g. arguments in cases of Bosnia and Rwanda that the arms embargo breached their right to self-defence. See generally, C. Gray, *International Law and the Use of Force* (2000) at 94–96.

[37] Even the more limited regimes, however, have certain humanitarian costs. A ban on air flights or on the supply of petroleum-related products, for example, will necessarily effect the functioning of health and welfare services.

[38] Reisman and Stevic comment, for example, that 'an arms embargo against Libya in response to the latter's involvement in the bombing of civilian aircraft would not have been adequately tailored to the illegal acts involved' (*supra* note 28, at 125).

deployment of comprehensive sanctions will therefore remain one of its strategic weapons.[39]

To the extent that comprehensive regimes remain a policy option for the Security Council, it has attempted to respond to the humanitarian imperative by way of allowing exemptions for humanitarian provisions. It has been a characteristic of sanctions policy that even in the case of the most comprehensive regimes, the Security Council has excluded certain categories of goods from the regime. In the case of Rhodesia,[40] this included a wide range of materials including educational equipment, publications and news material.[41] In that of Iraq, the Security Council initially exempted only supplies intended for medical purposes and certain basic foodstuffs (Resolution 661 (1990)).[42] This was later extended following the liberation of Kuwait to include supplies for essential civilian needs,[43] including not only agricultural and educational supplies, but also spare parts for the oil exploitation infrastructure and water and sanitation supplies.[44]

It is apparent, however, that the Security Council has experienced considerable difficulties with the effective implementation of exemptions.[45] Not only have there been differences of opinion within the Security Council as to whether certain items are automatically exempted, particularly items having a potential 'dual-use', but problems have also been experienced as regards the authorization process (such as whether prior approval is necessary), maintaining consistency between sanctioning states, and providing necessary support for the activities of UN humanitarian agencies.[46] The main difficulty, however, is that humanitarian exemptions tend to

[39] See e.g. Greenstock (UK), UN Doc. S/PV.4128, 17 April 2000, at 5–6 ('The case for the use of sanctions remains compelling. Apart from the threat of or the use of force, they are — in their full range, from travel bans at one end to comprehensive economic embargoes at the other — the only coercive measures available to the international community to respond to threats to international peace and security. We need them to bring into line those States and regimes which breach the boundaries of acceptable behaviour, defy the international community and ignore diplomatic efforts.').
This view is reinforced by the widely-held perception that the sanctions regime imposed upon the FRY was largely effective. See Report of the Copenhagen Round Table on United Nations Sanctions in the Case of the Former Yugoslavia, 24–25 June 1996, UN Doc. S/1996/776, at 13, para. 68.

[40] Resolutions 216 (1965), 12 November 1965; 217 (1965) 20 November 1965; 221 (1966), 9 April 1966; 232, 16 December 1966; 253, 29 May 1968. Sanctions were lifted by Resolution 460 of 21 December 1979.

[41] Res. 253 (1968).

[42] Later in the same year, the Security Council further instructed the Sanctions Committee to keep the situation regarding foodstuffs in Iraq and Kuwait under constant review and to pay particular attention to the situation of children under 15 years of age, expectant mothers, nursing mothers, and the sick and the elderly. Res. 666 (1990).

[43] Res. 687 (1991).

[44] Res. 1302 (2000). It is clear, however, that exemptions have not only been actively sought and obtained in the case of comprehensive sanctions. Thus, in the case of the embargo on flights by or for the UNITA rebels in Angola, exceptions have been made for cases of medical emergency or for flights carrying food, medicine or supplies for essential humanitarian needs as approved by the Security Council Committee established under Resolution 864 (1993). Resolution 1127 (1997).

[45] For an early critical review of the work of Sanctions Committees see Koskenniemi, 'Le Comité des Sanctions', 37 *AFDI* (1991) 119.

[46] For an account of the difficulties facing UNHCR in the FRY see, Pirkko, 'International Protection of Refugees and Sanctions: Humanizing the Blunt Instrument', 9 *IJRL* (1997) 255.

focus primarily upon the transactional aspects of welfare delivery — upon whether supplies of certain products are to be subject to an embargo, or otherwise excused. They do not, as such, ensure either that the target state has sufficient resources to purchase the goods in question, that it has an adequate infrastructure for welfare delivery, or that subsequent distribution will be such as to fulfil the needs of the most vulnerable or disadvantaged. It was in partial recognition of such considerations that the oil-for-food programme was instituted in Iraq for the purpose of ensuring the supply of essential humanitarian provisions,[47] but even this has not substantially dispelled continuing concern as to the deleterious effects of the regime.

3 The Legal Framework

Whilst it is undoubtedly the case that the Security Council has attempted to minimize the infliction of what it regards as 'collateral damage' in the imposition of sanctions regimes, it is ultimately unclear whether this is a policy informed by legal principle or simply by a compliant pragmatism. Discussions as to the legal framework governing the imposition of economic sanctions tend to run into disputed territory relatively quickly. Whilst it is clear that Article 41 of the UN Charter enables the Security Council — following an appropriate determination under Article 39 — to impose a wide range of sanctions upon states for the purpose of responding to a threat to international peace and security, its practice in that respect has invariably been regarded as controversial. Apart from apparently enlarging its competence under Article 41 by means of a broad interpretation of what counts as a 'threat to the peace',[48] the Security Council appears to have been largely unconcerned with the need to situate its activities clearly within the framework of any particular Charter article (using force to police embargoes) or to limit itself to the types of activities specifically envisaged therein (such as in the establishment of the Yugoslav and Rwandan criminal courts). The evident discretion available to the Security Council in this regard is further reinforced by the presumption that it is largely competent to determine its own jurisdiction,[49] and by the absence of available mechanisms for

[47] This was initially ill-fated. A scheme was proposed in Resolution 706 (1991) and a basic structure for its implementation laid down in Resolution 712 (1991). Neither of these resolutions were ever implemented. On 14 April 1995, the Security Council created a new arrangement to the same end in Resolution 986 (1995). This 'temporary' arrangement allowed for the sale of $2 billion of Iraqi oil ($1 billion in each of two 90-day periods), the terms of which were agreed with Iraq in a Memorandum of Understanding (S/1996/356) followed by the adoption of the necessary procedures by the Sanctions Committee in August (1996) (S/1996/636). On 10 December 1996, states were finally authorized to import petroleum and petroleum products from Iraq during specified periods (Resolution 1111 (1997); Resolution 1129 (1997)). In 1998 the Council extended the scope of the programme (Resolution 1153 (1998); 1210 (1998)) and at various points has further extended the period of allowable trade.

[48] Koskenniemi observes that: 'The sense of "peace" has been widened from the (hard) absence of the use of armed force by a State to change the territorial *status quo* to the (soft) conditions within which — it is assumed — peace in its "hard" sense depends; a change from a formal to a substantive meaning.' Koskenniemi, *supra* note 33, at 341 (footnotes omitted).

[49] *Certain Expenses* Case, ICJ Reports (1962) 151, at 168.

judicial review.[50] It is commonly held, nevertheless, that whilst the Security Council may be free to determine when a threat to the peace, breach of the peace, or act of aggression has occurred (under Article 39),[51] action taken in pursuance of that determination nevertheless falls within a predetermined legal framework.[52] It is putatively within this framework, therefore, that the demands for 'smartening', 'humanizing' or 'targeting' sanctions are to be found.

There are various different argumentative strategies through which substantive limits may be identified as applying in relation to UN-imposed sanctions. None of them, however, is without its difficulties. The first, and most obvious, course is to argue that the Security Council's powers are limited according to the terms of Article 24(2) of the Charter by reference to the purposes and principles of the United Nations as elaborated in Articles 1 and 2 of the Charter. Those purposes and principles, however, are broadly phrased, and give very little sense of tangible constraint. Article 1 refers not only to the maintenance of international peace and security,[53] but also, and among other things, to the solving of international problems of a humanitarian character and promoting respect for human rights.[54] Whilst it might be argued that, in taking enforcement action under Chapter VII, the Council is bound not to substantially undermine the promotion of respect for human rights, such a thesis does depend upon a sense in which the various objectives are either regarded as inherently compatible (as being mutually exclusive or equivalent), or as enjoying a hierarchical relationship with one another. None of those assumptions is axiological, or follows directly from the terms of the Charter itself. Much depends, apart from anything else, upon how broadly one construes the reference to 'human rights' (does it include the rights to food or health care?[55]), and how one understands those principles as relating

[50] See generally, Bowett, 'Judicial and Political Functions of the Security Council and the International Court of Justice', in H. Fox (ed.) *The Changing Constitution of the United Nations* (1997) 73; Gowlland-Debbas, 'The Relationship between the International Court of Justice and the Security Council in Light of the Lockerbie Case', 88 *AJIL* (1994); Alvarez, 'Judging the Security Council', 90 *AJIL* (1996) 1; Franck, 'The "Powers of Appreciation": Who is the Ultimate Guardian of the UN Legality?', 86 *AJIL* (1992) 519; Akande, 'The International Court of Justice and the Security Council: Is there Room for Judicial Control of Decisions of the Political Organs of the United Nations?', 46 *ICLQ* (1997) 309.

[51] For the view that determinations under Article 39 are of a 'factual' or 'political' nature, see H. Kelsen, *The Law of the United Nations* (1950) 735; Gowlland-Debbas, 'Security Council Enforcement Action and Issues of State Responsibility', 43 *ICLQ* (1994) 55, at 61.

[52] Reisman and Stevic comment that 'we take it as unexceptional that when the community of nations applies coercions in defence of public order, it is subject to the same laws of war or humanitarian law that have been prescribed for others', *supra* note 28, at 127. From another perspective Brownlie remarks that 'there is no dichotomy involving discretionary power and the Rule of Law. A discretion can only exist within the law'. He concludes, therefore, that 'the Security Council is subject to the test of legality in terms of its designated institutional competence'. Brownlie, 'The Decisions of Political Organs of the United Nations and the Rule of Law', in R. Macdonald (ed.), *Essays in Honour of Wang Tieya* (1993) 91, at 95–96.

[53] Article 1(1).

[54] Article 1(3).

[55] The Committee on Economic, Social and Cultural Rights took the view that this includes at least the 'core content' of economic, social and cultural rights. General Comment No. 8, UN Doc. E/C.12/1997/8, paras 7–8.

to, or affecting, the taking of action for the purpose of maintaining international peace and security.

A second approach would be to suggest that the Security Council, as an organ of the United Nations, must operate within the parameters of general international law, and that, therefore, the imposition of sanctions would be governed by such obligations as might attach to any equivalent measures taken by individual states. There seems to be a certain amount of support for this; it has been argued, for example, that the acts of UN forces should be governed by the terms of humanitarian law,[56] and that enforcement measures, generally speaking, should be regarded as falling within the general framework of the law of countermeasures.[57] The problem, however, is that the powers of the Security Council under Chapter VII seem to be somewhat more extensive than the analogous powers of individual states to have recourse to armed force or other countermeasures,[58] and it is therefore difficult to view it as operating within an identical set of limits. The problem is not merely one of determining whether compliance with international law is likely to be a sufficient condition for the maintenance of international peace and security,[59] but of overcoming the theoretical disputes concerning the nature of the Security Council's legal authority (as being delegated or in some sense 'inherent').[60]

The third strategy might be to argue that, to the extent that implementation of such

[56] 1971 Zagreb Resolution of the Institute of International Law, 66 *AJIL* (1972) 465. See D. Bowett, *UN Forces* (1964), at 484.

[57] See, in particular, the contribution of M. O'Connell to this symposium, at 63.

[58] Whilst the Security Council has often noted the breach of one obligation or another — whether that be violations of human rights and humanitarian law (Resolutions 664, 667 and 670 (1990) concerning Iraq; Resolution 794 (1992) concerning Somalia), diplomatic immunities (Resolutions 664, 667 (1990) which refer to the 1961 and 1963 Vienna Conventions on diplomatic and consular relations), the taking of territory by force (see e.g., SC Res. 787 (1992)) or non-compliance with the Charter itself (see, e.g., SC Res. 748 (1992) concerning Libya; and SC Res. 713 (1992) concerning Yugoslavia) — in many cases the general approach seems to be one premised upon a much broader, and less technical, evaluation of the situation. Thus in Somalia, the Council emphasized that it was 'the magnitude of the human tragedy caused by the conflict in Somalia' that constituted a threat to international peace and security, and in Haiti, that it was 'the incidence of humanitarian crises, including mass displacements of population'. In these cases, it is difficult to avoid the impression that the evaluation as to whether the Security Council is justified in acting in any particular case, actually precedes any precise determination as to what international obligations have been breached, or as to who is actually responsible. In many cases, furthermore, Security Council sanctions appear to have been imposed purely for the purpose of ensuring that the conflict does not escalate and without any desire to identify the culpable party. E.g., Yugoslavia, Somalia, Liberia, Rwanda, Ethiopia and Eritrea. See Gray, *supra* note 36, at 156. See Gowlland-Debbas, *supra* note 51, at 63–66.

[59] Cf., Kelsen, *supra* note 51, at 294 ('the purpose of the enforcement action under article 39 is not to maintain or restore the law, but to maintain or restore peace, which is not necessarily identical with the law').

[60] One might note, in particular, the debate as to whether the Council's authority under Chapter VII derives from a delegation of powers from individual states, or from the 'international community' as a whole, or whether they simply derive from the Charter. See Degni-Segui, 'Article 24', in J.-P. Cot and A. Pellet, *La charte des Nations Unies* (1991) 450; D. Sarooshi, *The United Nations and the Development of Collective Security* (1999) 27. Contra, Delbruck, 'Article 24', in B. Simma *et al.*, *The Charter of the United Nations: A Commentary* (1994).

measures is to be undertaken by individual Member States, they must be effectively constrained by any customary or conventional obligations assumed by those states. Apart from any observation one might make as to the status or quality of the obligations in question (i.e. whether they have the status of *jus cogens*, or impose obligations *erga omnes*) this line of argument has certain evident weaknesses. In the first place, it is apparent that states may derogate from customary obligations by means of treaty, and that UN Member States have committed themselves to fulfil Charter obligations in good faith (Article 2(2)), and give the Organization 'every assistance in any action it takes in accordance with the present Charter' (Article 2(5)). Article 103 of the Charter furthermore provides that 'in the event of a conflict between the obligations of the Members of the United Nations . . . and their obligations under any other international agreement', Charter obligations are deemed to prevail.[61] Whilst one may not automatically suppose that Security Council decisions constitute an elaboration of Charter obligations,[62] the force of any objection is clearly undermined by the unavailability of an effective mechanism of review.

The evident weakness of these various argumentative strategies does not as such dispose of the initial question as to whether one can regard the Security Council as operating within substantive limits, but rather suggests that if there are such limits, they remain to be adequately articulated. In that context, the current initiative may represent an initial, albeit hesitant, step towards a recognition that the institutional division of powers within the United Nations (between the 'political' and the 'social and humanitarian')[63] is not such as to immunize Security Council measures to preserve the peace from arguments as to the justice or legitimacy of that action.

4 In Search of Humanitarianism

Putting such difficulties to one side, and assuming that the strategy to target sanctions is responsive to a concern if not for their formal legality, then for their perceived legitimacy, the major platform upon which such a claim is currently enunciated is that the measures are both conducive to the maintenance of international peace and are essentially 'humanitarian'. An abstract appeal to 'humanitarianism', however, only raises questions as to its content, the point at which it should enter strategic decision-making, or the weight it should have in counterbalancing other competing demands. In the present context, depending upon one's time frame or the scope of one's strategic vision, a plea to 'humanitarianism' may either justify or repel an argument in favour of sanctions: sanctions are humane insofar as they are conducive to the maintenance or restoration of international peace and security, but they are

[61] The Security Council explicitly relied on this provision in imposing the air embargo on Iraq in Res. 670.

[62] For this point see Bowett, 'The Impact of Security Council Decisions on Dispute Settlement Procedures', 5 *EJIL* (1994) 89, at 92.

[63] Cf. Koskenniemi, *supra*, note 33, at 336 ('This dichotomy between *hard* UN (political activities for which the Security Council is mainly responsible) and *soft* UN (activities for which the General Assembly — through the ECOSOC — is mainly responsible) is functionally and ideologically the most significant structuring feature of the organization.').

inhumane insofar as they incur excessive human suffering. For the idea to have any salience, then, it must do so through, or by means of, some argumentative structure that not only endows it with a certain content but also establishes the mode in which that content is to be deployed. Within the framework of current international legal discourse, there are two obvious choices in this regard: human rights law and humanitarian law.

A *Human Rights: Too Much or Too Little?*

For many, the sensibilities of 'humanitarianism' as a secular 20th-century concept are best expressed through the medium of human rights. Ostensibly, the catalogue of human rights enunciated in the Universal Declaration, and subsequently 'expanded' or 'clarified' in later treaties, has a certain presumptive salience as regards issues arising in the debate over sanctions. That a sanctions regime may have contributed to the untimely death of individuals, or to extensive and severe suffering, may, on the face of it, be regarded as inconsistent with the rights to life and freedom from torture or inhuman treatment (as expressed in the Universal Declaration or the International Covenant on Civil and Political Rights). Similarly, an embargo on goods such as foodstuffs or medical supplies could be regarded as inconsistent with the right to an adequate standard of living (including food) or the right to health as expressed in Article 25(1) of the Universal Declaration,[64] or Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights (1966).[65] Surprisingly enough, however, debates within the United Nations and elsewhere only infrequently refer to human rights. At all times, the preferred phraseology seems to be one of 'humanitarian concerns' bolstered by references to relief aid, or assistance, rather than human rights and social entitlements.

The first, and very obvious, difficulty in utilizing the idea of human rights as a medium for limiting recourse to economic sanctions stems from the fact that (in conventional form at least) they tend to be expressed primarily in territorial or jurisdictional terms.[66] The International Covenant on Civil and Political Rights (1966) provides, for example, that:

> Each State party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant.

[64] 'Everyone has the right to a standard of living adequate for the health and well-being of himself and 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.'

[65] Article 11 provides, *inter alia*, that: 'The States Parties to the Present Covenant recognise 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. The States parties will take appropriate steps to ensure the realization of this right, recognising to this effect the essential importance of international co-operation based on free consent . . .'.

Article 12 provides that: 'The States parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health . . .'.

[66] See generally, Meron, 'Extraterritoriality of Human Rights Treaties', 89 *AJIL* (1995) 78.

Other human rights treaties contain similar clauses apparently limiting obligations to those found within the 'jurisdiction' of each state party.[67] Even if one takes account of the fact that human rights courts and committees have extended the concept of responsibility under the relevant treaties to include the foreseeable effects of decisions in third states[68] and to include acts on territory under the 'control' of states (even if not within their formally claimed 'jurisdiction'),[69] it does not seem to extend to cases in which the individuals concerned are at all times within the jurisdiction of a third state. The practice and operational philosophy of human rights treaties seem to remain largely compartmentalized by reference to territorial boundaries or arenas of control, rather than, for example, spheres of influence.[70] Undoubtedly it may be argued that customary obligations are not similarly confined, but there is a sense in which human rights may be regarded as the instantiation of a political philosophy concerned with the inter-relationship between governments and individuals within specified territorial domains, and therefore largely inapplicable to the situation arising in the case of economic sanctions.

Interestingly enough, a potential exception here is the International Covenant on Economic, Social and Cultural Rights. Unlike other human rights treaties, the ICESCR contains no jurisdictional clause, and merely provides that states parties realize the rights of 'everyone' by taking steps individually 'and through international assistance and co-operation'. Notwithstanding the evidently 'progressive' overtones of Article 2(1) of the Covenant,[71] use of the term 'everyone' and the reference to international cooperation could be taken as signalling the assumption of an obligation, on the part of states parties, not to undermine the enjoyment of the rights of individuals irrespective of where they may be found. Such a view seems to have been endorsed by the UN Committee on Economic, Social and Cultural Rights in its General Comment No. 8, in which it remarked that:

> Just as the international community insists that any targeted State must respect the civil and political rights of its citizens, so too must that State and the international community itself do everything possible to protect at least the core content of the economic, social and cultural rights of the affected peoples of that State.[72]

As far as states being responsible for the imposition, maintenance or implementation of sanctions are concerned, then, several consequences are thought to follow from this obligation. Not only should economic, social and cultural rights be taken

[67] Other treaties, such as the European Convention on Human Rights, the American Convention on Human Rights, and the Convention on the Rights of the Child, all refer similarly to the 'jurisdiction' of the state concerned.

[68] E.g. *Soering v. United Kingdom*, ECtHR Judgment of 7 July 1989, 11 EHRR 439.

[69] E.g. *Loizidou v. Turkey*, ECtHR, Judgment of 23 March 1995, Series A, No. 310.

[70] It could be suggested that this is precisely the problem to which advocates of 'third generation' or 'solidarity' rights direct themselves. See e.g. Alston, 'A Third Generation of Solidarity Rights: Progressive Development or Obfuscation of International Human Rights Law?', 29 *NILR* (1982) 307.

[71] Under Article 2(1) states parties commit themselves to take steps, to the maximum of available resources, to achieve progressively the full realization of the rights within the Covenant.

[72] 'The Relationship between Economic Sanctions and Respect for Economic, Social and Cultural Rights', General Comment No. 8 (1997), UN Doc. E/C.12/1997/8, para. 7.

into account in the design of an appropriate regime, but their enjoyment should be continuously monitored and steps should be taken to respond to any 'disproportionate suffering'.[73]

It is evident, however, that the Committee was cautious in the way it expressed itself in this Comment. Whilst noting that 'the inhabitants of a given country do not forfeit their basic economic, social and cultural rights by virtue of any determination that their leaders have violated norms relating to international peace and security',[74] it made clear that this was not to 'call into question the necessity for the imposition of sanctions in appropriate cases'.[75] Comprehensive sanctions are by no means ruled out in this evaluation. Indeed, the Committee simply echoed the conclusion of a UN study to the effect that 'decisions to reduce the suffering of children or minimize other adverse consequences can be taken without jeopardizing the policy aim of sanctions'.[76]

That the Committee refrained from taking a stronger stance may be a consequence of the complexities of attribution and of distinguishing effectively between foreground and background considerations. There are evidently a number of difficult measures here, including the extent to which the target regime itself may actively conspire to reduce access to food or health care made available by the regime, and the extent to which the harm experienced may be attributed to alternative causes such as civil conflict or a deteriorating economic environment. But the major obstacle for the organization as a whole seems to be less one founded upon considerations of responsibility, or attributability of harm, and more directly based upon a simple unwillingness to regard the exercise of Security Council discretion as regards the preservation of international peace and security as being substantially constrained by a concern for 'human rights'.[77]

The problem, it seems, is multi-layered. It is partly conditioned by an assumption that the main sphere of human rights activity is the domestic rather than the international, partly by an unwillingness to regard issues of social welfare as anything other than an incidental by-product of economic development, and partly in the belief that speaking about human rights violations is simply inappropriate in a context in which international peace and security is being maintained. In that sense, human rights law seems to either demand too much (by asking states to commit themselves to values they would otherwise regard as inconsequential, or by placing far too many strictures upon recourse to coercive measures) or to offer too little (by expressing the interests in question in a purely conditional way, or by focusing only upon internal dynamics rather than international effects). Either way, it is apparent that much of

[73] *Ibid*, paras 12–14.

[74] *Ibid*, para. 16.

[75] *Ibid*, para. 1.

[76] *Ibid*, para. 15. The study cited was L. Minear, *et al.*, *Toward More Humane and Effective Sanctions Management: Enhancing the Capacity of the United Nations System, Executive Summary*, 6 October 1997.

[77] This may, in part, be explained by the absence of a derogation clause within the ICESCR.

the debate as to the deployment of sanctions by the United Nations has tended to be conducted without any sense that human rights issues are at stake.[78]

B *Humanitarian Law: Advance and Retreat*

Whilst the linguistic and performative structure of human rights seems to have little in common with the current debate over the deployment of sanctions, the opposite is the case as regards humanitarian law. The very terminology that is currently employed — 'targeting' or 'smartening' sanctions, or reducing 'collateral damage' — seems to draw explicitly upon the terms of humanitarian law. As is frequently pointed out, humanitarian law is marked by the interaction of two dominant principles — the concept of military necessity and the demands of humanity — and this dialectic is subsequently reproduced throughout the field in a series of discursive arrangements.[79] Legitimate targets are thus to be distinguished from illegitimate ones, soldiers from civilians, necessary force from unnecessary violence, and humane tools or techniques from the inhumane. At some points these arrangements manifest themselves in relatively sharp distinctions, at others the distinctions are highly abstract or contextual. Throughout, however, there is an underlying idea of proportionality that allows an evaluation of means by reference to ends, and which places certain conceptual limits upon what may properly be regarded as 'necessary' in the circumstances.[80]

It is clear that the terms of humanitarian law may have considerable salience in terms of regulating the type of sanctions to be adopted. Quite apart from the general requirement to distinguish properly between 'combatants' and 'civilians' in the conduct of warfare,[81] and to desist from acts which target the civilian population in an indiscriminate manner (such as the starvation of civilians[82]), it is apparent that no restrictions should be placed upon the provision of humanitarian relief.[83] Article 23 of the Fourth Geneva Convention (1949) provides, for example, that:

> Each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians of another High Contracting Party, even if the latter is its adversary. It shall likewise permit the free

[78] For an exception see Hasmy (Malaysia), SC 4128th mtg., 17 April 2000, at 14.

[79] For a general account see J. Pictet, *Development and Principles of International Humanitarian Law* (1985).

[80] For the view that proportionality and relevance are the two operative elements of the concept of necessity see M. Bothe, K. Partsch and W. Solf, *New Rules for Victims of Armed Conflicts* (1982), at 192–198.

[81] Article 51 of Protocol I (1977) specifically provides that the civilian population should not be the object of attack.

[82] Additional Protocol I of 1977 Article 54(1).

[83] A pertinent example, here, is Article 14 of the Fourth Geneva Convention which provides that the High Contracting Parties may establish hospital and safety zones 'so to protect from the effects of war, wounded, sick and aged persons, children under fifteen, expectant mothers and mothers of children under seven'.

> passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases.[84]

The only exceptions here are in cases where there is evidence that consignments concerned may be diverted from their destination, or where a definite military advantage might accrue to the 'military efforts or economy of the enemy' through the substitution of goods.

That such principles might be deemed applicable in the case of UN-imposed economic sanctions is clearly premised upon the belief that the absence of armed conflict should not be regarded as a major stumbling block. In its banal sense, maintaining a formal distinction between economic and military measures (as reflected in the distinction between measures falling under Articles 41 and 42 of the Charter) has little to recommend it. Not only do sanctions have their historical roots in the blockades deployed as strategic measures of war,[85] but even in the sanitized form envisaged by the UN they are undoubtedly deployed for the same purpose, namely, the intentional infliction of harm upon an opponent. Neither in terms of purpose, nor in terms of the level of potential damage, does there seem to be good reason to actively distinguish between such forms of coercive measures.[86]

There is, however, a reason to worry about this issue, which is not simply related to the question whether economic measures can be regarded as strictly analogous to measures involving armed force. The divisional categorization of the law of armed conflict into the *jus in bello* on the one hand, and the *jus ad bellum* on the other, is premised upon the belief that the humanitarian objectives of the former should not be made conditional upon the legitimacy or otherwise of recourse to force. The lawfulness of recourse to violence on the part of either party, in other words, is regarded as independent of the requirement that they (or their opponents) should conduct themselves in a humane way. In order to effectively separate these two arenas of inquiry, the law of armed conflict relies upon the sociological observation that armed conflict is actually taking place. Once the existence of armed conflict becomes the presumptive backdrop, the focus of inquiry is largely limited to an analysis of a tactical rather than a strategic nature. Rather than address the broad necessity of armed force as one of many strategic responses to a particular threat, attention falls instead upon tactical questions such as how that force is used and against whom.[87]

If this structure of reasoning were to be applied, by analogy, to the case of economic sanctions, it would suggest that one should maintain an agnosticism as to the

[84] Cf. also, Article 70 Additional Protocol I, concerning the basic needs of the civilian population under occupation.

[85] For an account of the varied approaches to this issue over time see Neff, 'Boycott and the Law of Nations: Economic Warfare and Modern International Law in Historical Perspective', 59 *BYbIL* (1988) 113.

[86] See Reisman and Stevic, *supra* note 28, at 95.

[87] There may certainly be an interpenetration of the two fields of inquiry insofar as the *jus ad bellum* seems to impose an additional level of constraint upon the conduct of hostilities. See, Greenwood, 'The Relationship between the Jus ad Bellum and Jus in Bello', 9 *Review of International Studies* (1982) 221. Cf. also, *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons*, ICJ Reports (1996) 225.

legitimacy of recourse to sanctions, and focus rather upon refining them as an institution in order to minimize the collateral damage. This, in a sense, is exactly what 'targeting' sanctions and introducing sufficient humanitarian exemptions is all about. It also incidentally conforms to most current views as to the structure of Articles 39 and 41 of the Charter. The problem this poses is that, unlike a case of armed conflict in which the use of military force provides the situational backdrop, there is no similar conditioning assumption in the event of sanctions (apart from what may be deduced from the observation that international peace and security have been threatened) and it becomes far more difficult to distinguish between the two levels of decision-making — the strategic and the tactical — for the purpose of articulating the point at which humanitarian arguments may have salience. Since an argument as to the (strategic) necessity of sanctions will inevitably involve certain assumptions as to both the type and likely effect of the measures to be adopted (i.e. tactical questions), and *vice versa* (an argument as to the type of sanctions to be deployed will depend upon an evaluation of their relative efficacy), humanitarian arguments will constantly be in danger of being overridden by an expanded understanding of what is actually necessary in the circumstances. The complaint that comprehensive economic sanctions in the case of Iraq are inhumane, for example, might naturally argue in favour of an alternative course of action that does not involve targeting the economy as a whole. It is clear, however, that so long as one can effectively continue to argue that comprehensive economic sanctions are a strategic necessity (that they are the best course of action in the circumstances), humanitarian arguments can only operate within the remaining space (such as in requiring sufficiently extensive exemptions, or in advancing the desirability of humanitarian aid).

A reliance upon the argumentative structure of humanitarian law, therefore, effectively normalizes the institution of sanctions (of whatever nature), just as the existence of armed conflict is presumed for purposes of application of the *jus in bello*. In such a context, the cause of humanitarianism is forced to follow, and become entirely subordinate to, the cause of maintaining the peace, and far from exercising a substantive restraint upon the choice of measures to be adopted, merely serves to palliate the concern of those who dislike the idea that coercive measures are harmful.

Conclusions

There is a certain ambivalence in the current debate over UN-imposed sanctions. On the one hand, there is a general belief that sanctions of all kinds remain a useful strategic tool in the armoury of the Security Council, and this belief is coupled with a continued enthusiasm for their deployment in 'appropriate' cases. On the other hand, there is also a palpable anxiety not only as to their effectiveness in particular cases, but also for the level of 'collateral damage' that is characteristically incurred (and 'damage' may be understood here as including damage not only to the civilian population or third states, but also to the reputation of the Security Council itself). That the issue of targeting or smartening sanctions has arisen at all suggests either

that the argument has not been won by those who advocate their use, or that 'the victory was ultimately a Pyrrhic one'. Either way, the debate appears to evidence a strange disconnection between intent and outcome, ambition and experience.

The main thrust of the argument presented here is not that recourse to sanctions should be abandoned, or that efforts to inject a humanitarian component into the activities of the Security Council are necessarily misplaced. Indeed it might be conceded that if the deployment of comprehensive sanctions were to be regarded as an excessive and aberrant exercise of power on the part of the Security Council, many of the objections presented here would lose their force. In the absence of any such admission, however, it might reasonably be argued that the new initiative seems to be more concerned with an intent to disguise persistent anxieties as to effectiveness of sanctions or the legitimacy of the Security Council action, by shifting the focus of attention towards the managerial questions of design and implementation under the banner of 'humanitarianism'.

The 'normalization' of sanctions within the current debate has several consequences. To begin with, it tends to produce a discursive 'overhang' that places the argumentative burden upon those who oppose it as a practice — legitimacy has become 'in-built' or inherent to be rebutted only in exceptional cases (if at all). It also tends to effectively 'internalize' opposition. A concern as to the effect of sanctions is construed less as an argument against sanctions as a practice, and more as an argument as to how sanctions can be improved as a strategic tool. The debate can then be shifted to a concern for the relative (de)merits of various different techniques and institutional arrangements, such as the choice between financial and trade sanctions, humanitarian exemptions and sector-specific embargoes, international monitoring and national reporting. The 'normalization' also, and finally, denies any equivalence of position or argumentative strategy. There is, in other words, no evidence of a 'balancing' of counterpoised positions or of a weighing of evidence. Rather, ideas as to the strategic necessity of sanctions and the demands of humanity are regarded as forming part of the very same project. No room is left, therefore, for the argument that efforts to humanize sanctions may undermine their efficacy, or that in making sanctions effective humanitarian considerations necessarily take a back seat. Sanctions are presented as both humane and inhumane, both a necessary evil and a just endeavour. Even if one were to endorse the practice of smartening sanctions on the basis that it is 'better than nothing', one runs the risk of jeopardizing the coherence of one's humanitarian vision. Not only does the idea of humanitarianism in this context have to regard as morally equivalent choices as to the scope and severity of economic measures, on the one hand, with choices as to the best method to alleviate suffering on the other, it also has to accept the idea that there is no moral difference between an individual surviving from the produce of her own toil, or surviving by means of charitable disbursements from humanitarian agencies.

Underlying these concerns is the palpable absence of any expressed legal framework within which the various considerations are thought to come into play. References are occasionally made to customary and conventional obligations (of human rights and humanitarian law), and to the purposes and principles of the United Nations.

Very rarely, however, is any consideration given to how, or in what way, such obligations constrain Security Council activities under Article 41 — if indeed they do so at all. Until such a framework is made clear, any appeal to 'humanitarianism' in the activities of the Security Council is likely to remain elusive and ephemeral, lacking decisive import or a sense of constraint.