
Debating the Law of Sanctions

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Abstract

After years of United Nations-mandated sanctions against Iraq, human rights advocates began charging the UN Security Council with genocide in its use of 'sanctions of mass destruction'. Following the charges, a full debate began on the law of sanctions. The article recounts this debate, setting it in the context of two earlier rounds of discussion on the lawful use of sanctions. Those earlier debates resulted in general consensus that the Security Council was both free to use sanctions whenever it wanted and that sanctions should be comprehensive, air-tight and subject to enforcement. Sanctions of this description were imposed on Haiti and Iraq, but were soon linked to widespread suffering. The debate among lawyers then turned to how sanctions could or should be limited, perhaps based on human rights law, humanitarian law, or the law governing unilateral sanctions. From this debate the principle of proportionality is emerging as a general limitation on coercion and force in international law. Nevertheless, proportionality cannot eliminate all unintended effects of sanctions. The next iteration of the sanctions debate may well return to when the Security Council may impose sanctions, proportional or not.

The impact of United Nations sanctions on Iraq has sparked a worldwide debate on all aspects of sanctions, including their legality. The legal debate continues a long-running discussion among international lawyers on the law of UN sanctions. From the UN Security Council's first imposition of mandatory sanctions, the use of sanctions has been surrounded by legal controversy. The first mandatory use involved sanctions against Rhodesia in 1966. The debate at that time centred on whether the Security Council was acting within its authority under the UN Charter in mandating sanctions in a situation not squarely within the original Charter conception. That debate continued until the end of the Cold War when it faded in preference to a discussion about effectiveness. With the end of the Cold War, the Security Council suddenly became active, imposing nine sanctions regimes in four years.¹ What did the

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¹ Between 1990 and 1994, the Security Council imposed sanctions against Iraq (1990), Yugoslavia (1991, 1992, 1998), Libya (1992), Cambodia (1992), Somalia (1992), Liberia (1992, 2001), Rwanda (1992), Haiti (1993), and part of Angola (1993, 1997, 1998). After 1994, sanctions were imposed on Sudan (1996), Afghanistan (1999, 2000), Ethiopia-Eritrea (2000) and Liberia (2001). D. Cortright and G. A. Lopez, *The Sanctions Decade, Assessing UN Strategies in the 1990s* (2000), at 205–207.

law allow to ensure the success of those sanctions? The inquiry into effectiveness, in turn, gave way to a debate on the humanitarian impact of sanctions. After years of comprehensive measures, target populations were suffering, especially the people in Iraq. The related legal question, and the focus of the legal debate growing from the Iraqi sanctions, concerns whether the UN Security Council is subject to standards in *how* it uses sanctions.

This article traces the shifting legal debate over the use of UN sanctions. It finds that a clear consensus is emerging among international lawyers that while the Security Council may have broad authority to impose sanctions, it must observe standards in how sanctions are imposed, even if that means that the sanctions are less effective. What exactly the standards are is a part of the current legal debate. Some lawyers have argued strenuously that the Security Council must meet a standard found in the law of human rights. Others have suggested that different standards are appropriate when the very purpose of the sanctions is to enforce human rights and the maintenance of peace and security. International humanitarian law standards and countermeasures standards have both been proposed as more appropriate alternatives. In both, the core legal restraint is found in the principle of proportionality. The next phase of the legal debate is developing around the concept of proportionality. The issues are whether proportionality can provide the legal restraint on the Security Council necessary to achieve the international community's interest in law enforcement while remaining within the bounds of humanity.

1 *The Ultra Vires Debate (1965)*

The first pre-occupation of international lawyers in the matter of sanctions concerned the question of when the Security Council may lawfully impose sanctions. As an organ of an international organization, the Council has only those powers granted by the members in the United Nations Charter.² Charter Article 39 authorizes the Security Council to take measures, including economic measures per Article 41, to respond to threats to the peace, breaches of the peace and acts of aggression.³ If the Council imposed measures in situations not explicitly authorized in Article 39, would it be acting unlawfully or, more precisely, *ultra vires* the Charter?⁴ The question is analogous to the core question in the law of armed conflict: When may armed force be used lawfully? What do rules *ad bellum* permit? The *ultra vires* question remained the central legal issue until the end of the Cold War.

When the United Nations Security Council imposed mandatory economic sanctions

² Bindschedler, 'International Organizations, General Aspects', in R. Bernhardt (ed), *Encyclopedia of Public International Law*, vol. 2 (1992), at 1289–1290.

³ Frowein, 'Article 39', in B. Simma *et al.* (eds), *The Charter of the United Nations* (1995) 621.

⁴ 'When are acts of an international organization *ultra vires*? A simple answer: When they fall outside the competence of the organization as determined by the constituent treaty (the "constitution") of the organization concerned.' Bernhardt, 'Ultra Vires Activities of International Organizations', in J. Makarczyk (ed.), *Theory of International Law at the Threshold of the 21st Century, Essays in Honour of Krzysztof Skubiszewski* (1996) 599, at 602.

for the first time in the case of Rhodesia,⁵ a committed debate ensued in legal circles as to whether the Council had the legal right to impose sanctions in the circumstances. The mandatory sanctions — prohibitions on the sale of oil, weapons and ammunition, and the purchase of asbestos, chrome, sugar, tobacco and other exports — followed voluntary sanctions called for in 1965.⁶ Both sets of sanctions aimed at forcing the white minority regime of Ian Smith to back down from its Unilateral Declaration of Independence (UDI) from Britain. The Council was pressing for a peaceful transition from colony to independent, democratic state.⁷ The voluntary sanctions had not proven successful. Several states failed to implement them altogether. A number of states implemented them slowly, then exempted existing economic relations.⁸ Mandatory sanctions were then imposed in 1966 and extended in 1968.⁹ They were lifted in 1972 with the transfer of power to a majority government.

The Security Council imposed mandatory sanctions for the second time against South Africa in 1977. All UN members were ordered to join a comprehensive arms embargo on South Africa. Again, the aim was to pressure the apartheid regime in that country to give way to majority rule. The question was whether the sanctions could lawfully be imposed in response to human rights violations. Thus, the debate picked up many of the themes introduced during the Rhodesian sanctions debate.

In both cases, the Security Council found a threat to international peace and proclaimed that it was acting under Articles 39 and 41 of the Charter.¹⁰ Plainly neither case fit the original scenario contemplated by the Charter drafters. They had expected the Security Council to react to threats or uses of armed force by one state against another.¹¹ In the circumstances, some international lawyers argued that the Security Council had acted *ultra vires*.¹² They maintained that the main issues in both cases were really the concern over apartheid and not a threat to international peace, and, further, that the issues in both cases involved domestic jurisdiction only. Article 2(7) of the Charter forbids interference in domestic affairs.

The Security Council itself made formal findings in both instances that international peace was threatened. The concern regarding South Africa was a weapons build-up in the country.¹³ In Rhodesia, however, the Security Council imposed

⁵ SC Res. 232 (1966).

⁶ SC Res. 216 (1965); SC Res. 217 (1965).

⁷ G. Simons, *Imposing Economic Sanctions* (1999), at 84.

⁸ D. L. Losman, *International Economic Sanctions* (1977), at 94–97.

⁹ SC Res. 253 (1968).

¹⁰ SC Res. 217 (1965) (Rhodesia); SC Res. 418 (1977) (South Africa).

¹¹ Higgins, 'International Law and Rhodesia', 23 *World Today* (1967) 94, at 100.

¹² See the arguments of Dean Acheson, Cong. Rec., House, 12 April 1967, H 4031 (cited in McDougal and Reisman, 'Rhodesia and the United Nations: The Lawfulness of International Concern', 62 *AJIL* (1928) 1, at 6); Fenwick, 'When is There a Threat to the Peace? — Rhodesia', 61 *AJIL* (1967) 753, at 753–755. See also the arguments presented in Macdonald, 'Resort to International Economic Coercion', 17 *U. Toronto L. J.* (1967) 86, at 117.

¹³ Johnson explains that the Security Council never spelled out the link between the arms build-up and the threat to international peace. He does, however, supply details of South African weapon smuggling to Rhodesia and acts destabilizing Namibia and other southern African states. Johnson, 'Sanctions and South Africa', 19 *HILJ* (1978) 887, at 930.

sanctions on the entity that was arguably the victim of the international aggression. The United States government took the position that: ‘The Council had ample basis on which to make a finding of a threat to the peace. The illegal rebellion of the Smith regime in Rhodesia has obstructed political development in that territory toward independence . . . such action could lead to civil strife that might involve other parties on one or both sides of the conflict.’ As for interference in domestic jurisdiction, the US pointed out that Rhodesia was not a sovereign state within the meaning of Charter Article 2(7). Plus, the United Kingdom had itself brought the matter to the Security Council.¹⁴

Higgins made the additional point that the Charter refers only to ‘threats to the peace’, without specifying that measures must be taken against the authors of those threats.¹⁵ She also offered, however, that human rights violations do not give rise to collective action under Article 39.¹⁶

On the other hand, she pointed out that the Security Council has wide discretion to determine a threat or breach of the peace and that the only real check on Council discretion is found in the voting procedure of the Council. McDougal and Reisman endorsed this view: ‘The probabilities of arbitrary or spurious decisions escaping these procedures would not appear great.’¹⁷ Nevertheless, they go on to point out that the decision in the Rhodesia case was not arbitrary, finding that the UDI could be characterized as aggression because the Smith regime took control of territory,¹⁸ and that there was a threat to peace because racism could lead to violence.¹⁹ As to the domestic jurisdiction argument, ‘In the case of Rhodesia, the other peoples of Africa have regarded themselves as affected by the authoritarian and racist policies of the Rhodesian elites.’²⁰ McDougal and Reisman concluded that human rights abuse threatens peace.²¹

Their conclusion was highly influential. A number of scholars agreed with them, arguing forcefully not only that the Security Council could but should take action under Chapter VII in response to human rights violations.²² Certainly, many took the position that the Security Council had the discretion to impose sanctions virtually

¹⁴ U.S. Department of State, ‘Southern Rhodesia and the United Nations: The U.S. Position’, 56 *Dep’t State Bull.* (Mar. 1967) 366, at 375–376 (excerpted in F. Kirgis, *International Organizations in Their Legal Settings* (2nd ed. 1993), at 626–627). See also, Fawcett, ‘Security Council Resolutions on Rhodesia’, 61 *BYbIL* (1965–1966) 103, at 117; Johnson, *supra* note 13, at 921.

¹⁵ Higgins, *supra* note 11, at 103.

¹⁶ *Ibid.*, at 99.

¹⁷ McDougal and Reisman, *supra* note 12, at 9.

¹⁸ *Ibid.*, at 10.

¹⁹ *Ibid.*, at 10–11.

²⁰ *Ibid.*, at 12.

²¹ *Ibid.*, at 18–19.

²² F. R. Tesón, *Humanitarian Intervention: An Inquiry into Law and Morality* (1988); see also, Frowein, *supra* note 3, at 612; Delbrück, ‘A More Effective International Law or a New “World Law”? — Some Aspects of the Development of International Law in a Changing International System’, *Indiana L.J.* (1993) 705, at 711; V. Gowlland-Debbas, *Collective Response to Illegal Acts in International Law: United Nations Action in the Question of Southern Rhodesia* (1990), at 471–472.

whenever it wished. At any rate, interest in when the Security Council could impose sanctions faded out with the Cold War.

2 The Effectiveness Debate (1990)

As world conditions changed, the Security Council thoroughly embraced the flexible approach to interpreting Article 39. It rapidly imposed nine sanctions regimes in just a few years. The *ultra vires* debate did not disappear entirely,²³ but it did lose priority in the sudden embrace of sanctions to achieve a number of the international community's objectives. The dominant theme in books, articles and reports of the period was how to use sanctions to promote human rights and related goals such as democracy and self-determination.²⁴ The debate focused on making sanctions effective to achieve these ends. Lawyers argued for the priority of human rights over privileges of sovereignty, and the use of force to enforce sanctions in the cause of human rights. The central focus was more practical than legal, however. Scholars discussed issues like monitoring and oversight and the need for a sanctions regime to be comprehensive in order to have the desired impact. The UN incorporated the lessons learned and turned to imposing comprehensive sanctions. These, in turn, began to take a heavy toll on the populations of target states and the economies of neighbours.²⁵ The toll of comprehensive sanctions gave rise to the next debate, one on the inhumane impact of sanctions.

The first of the post-Cold War sanctions regimes was that imposed on Iraq. The Security Council sanctions on Iraq began within days of Iraq's unlawful invasion of its neighbour, Kuwait, on 1 August 1990. In Resolution 661, adopted on 6 August, the Council imposed a comprehensive ban on trade and financial transactions with Iraq. It also ordered that Iraqi assets be frozen worldwide.²⁶ Under Resolution 666, the Council expanded the economic sanctions but made explicit reference to exceptions for humanitarian considerations. In Resolution 670, air links were prohibited.²⁷ Following the successful expulsion of Iraq from Kuwait, the Security Council passed Resolution 687 which specifically continued the sanctions, but with wider humanitarian exemptions.²⁸ Resolution 687 established that the sanctions would end when

²³ E.g., see Graefrath, 'Iraqi Reparations and the Security Council', 55 *ZöaRV* (1995) 1. For an argument that while the requirements for imposing sanctions might have loosened, the requirements regarding the use of armed force may not have changed, see O'Connell, 'The UN, NATO and International Law after Kosovo', 22 *HRQ* (2000) 57, at 64, and note 69.

²⁴ J. Stemlau, *Sharpening International Sanctions, Toward a Stronger Role for the United Nations, A Report to the Carnegie Commission on Preventing Deadly Conflict* (Nov. 1996), at 3.

²⁵ Reisman and Stevick point out that the sanctions on Rhodesia were not particularly effective and, as a result, were not particularly criticized for their inhumane impact. Reisman and Stevick, 'The Applicability of International Law Standards to United Nations Economic Sanctions Programmes', 9 *EJIL* (1998) 86, at 99–101.

²⁶ SC Res. 661 (1990); see also Reisman and Stevick, *supra* note 25, at 101–107.

²⁷ SC Res. 666 (1990).

²⁸ SC Res. 687 (1991); Reisman and Stevick, *supra* note 25, at 102, note 48.

Iraq terminated its programme to develop weapons of mass destruction and permitted weapons inspectors to certify that it had done so.

The creative use of sanctions against Iraq fuelled the call for sanctions against dictators and human rights abusers all over the world.

As the world becomes more economically interdependent, sanctions can become a sharper tool of preventive action. No longer an instrument of superpower competition, sanctions can be used by the community of nations to protest abuses and enforce norms of behavior between states and between governments and citizen. . . . [M]uch hard work needs to be done to improve the effectiveness of UN-mandated sanctions. The difficulty of the task and the often frustrating work of forging a consensus among nations should not deter us from improving this alternative to violence.²⁹

Improving sanctions was the question that rose to the top of the agenda with the burst of Security Council sanction activity starting in 1990. Soon after the imposition of sanctions on Iraq, international lawyers turned for a brief time to debating the meaning of Charter Article 42 which allows the Council to take armed action should measures in Article 41 prove ‘inadequate’.³⁰ That debate was soon over, however, as interest turned to the question of effectiveness. Studies by Hufbauer and others showed that sanctions were effective only about a third of the time.³¹ If they were to be the main hope of achieving so many aspirations of the international community, scholars asked how could they be made more effective?

The United Nations itself and various NGOs studied the sanctions question, seeking ways to make them more effective.³² A common suggestion was to improve UN structures for oversight and enforcement.³³ Strengthening the UN sanctions committees was proposed.³⁴ Making sanctions ‘watertight’, was another common suggestion, along with ensuring that elites did not slip through the nets. Legal concerns apparently raised no important obstacles to the early post-Cold War sanctions.³⁵ Rather, scholars called for broader regimes with more forceful enforcement, including the use of armed force to enforce sanctions.³⁶

²⁹ Hamburg and Vance, ‘Foreword’, in Stemmlau, *supra* note 23.

³⁰ Weston, ‘Security Council Resolution 678 and Persian Gulf Decision Making: Precarious Legitimacy’, 85 *AJIL* (1991) 516, at 528–529.

³¹ Hufbauer and Oegg, ‘Targeted Sanctions: A Policy Alternative?’, 32 *Law & Pol’y Int’l Bus.* (2000) 11, at 17; see also, Cortright and Lopez, *supra* note 1, at 204.

³² See ‘Renewing the United Nations: A Programme for Reform’, Report of the Secretary-General, UN GAOR, 51st Sess., Agenda Item 168, at 36, UN Doc. A/51/950 (1997).

³³ Stemmlau, *supra* note 23, at 3; Martin and Laurenti, ‘The United Nations and Economic Sanctions: Improving Regime Effectiveness’ (A Paper of the United Nations Association-USA International Dialogue on the Enforcement of Security Council Resolutions, New York, Aug. 1997); Minear *et al.*, ‘Toward More Humane and Effective Sanctions Management: Enhancing the Capacity of the United Nations System’, (*Occasional Paper* No. 31, Thomas J. Watson Jr. Institute for International Studies, Providence, R.I., 1998).

³⁴ Schrijver, ‘The Use of Economic Sanctions by the UN Security Council: An International Perspective’ in H. H. G. Post (ed.), *International Economic Law and Armed Conflict* (1994) 123, at 157.

³⁵ N. D. White, *The Law of International Organisations* (1996), at 189–191. See also, Joyner, ‘Sanctions, Compliance and International Law: Reflections on the United Nations’ Experience against Iraq’, 32 *VJIL* (1991) 1. Schrijver, *supra* note 34, at 157–158.

³⁶ White, *supra* note 35, at 187.

3 The Humanitarian Impact Debate (1995)

The effectiveness debate soon lost the main attention of international lawyers as they began to learn of the toll sanctions were taking on general populations in targeted states. Pictures and reports first from Haiti, then Iraq began the debate over whether the Security Council must observe any particular legal standards in the application of sanctions. At first the emphasis was on better targeting of sanctions with a view to making them more effective.³⁷ Then, however, the debate returned fully to the realm of law. Human rights specialists, in particular, began arguing that the law of human rights governs the use of Security Council sanctions and that the Security Council must be held accountable for violating the law.³⁸ Other lawyers saw a closer analogy to international humanitarian law governing armed conflict. More recently the argument has been raised that the essential governing principle in the matter is the concept of proportionality. Proportionality is a restraining principle found in humanitarian law but has developed in an even more appropriate form for application to UN sanctions in the law of countermeasures. Finally, some international lawyers maintain that the Security Council is not held to any standard in how it uses measures to maintain or restore peace and security.

Reisman pointed in 1996 to the inhumane impact of UN sanctions on Haitians. '[T]he wealthy elite and the military command were waxing rich off the contraband industry the economic sanctions spawned. The rest of the population, which had been deprived of its popularly elected government and whom we were supposed to be helping, was, without exaggeration, starving to death.'³⁹ It was, however, the impact of UN sanctions on Iraq that shifted the debate fully toward standards. Müller and Müller riveted attention to the human tragedy accompanying Iraqi sanctions, sanctions which were supposed to be an attractive alternative to the use of armed force. 'No one knows with any precision how many Iraqi civilians have died as a result [of the sanctions], but various agencies of the United Nations . . . have estimated that they have contributed to hundreds of thousands of deaths.'⁴⁰

Despite this, the Security Council is not abandoning the use of sanctions. On 19 December 2000,⁴¹ the Security Council voted to increase the sanctions against Afghanistan, despite the desperate conditions prevailing in that country at the time of the vote. Resolution 1333 imposes carefully targeted financial, travel and trade sanctions on Afghanistan in support of conventions to eliminate illegal drugs, to

³⁷ See, e.g., Minear, *supra* note 33; *Toward Smarter, More Effective United Nations Sanctions* (Fourth Freedom Forum, Goshen, Ind., 1998).

³⁸ It appears that the Center for Economic and Social Rights was among the first to make this argument vociferously after a site inspection to Iraq in 1996. Center for Economic and Social Rights, *Unsanctioned Suffering: A Human Rights Assessment of UN Sanctions on Iraq* (1996), available at <<http://www.cesr.org/>>

³⁹ Reisman, 'Assessing the Lawfulness of Nonmilitary Enforcement: The Case of Economic Sanctions', 89 *AJIL* (1996) 37; see also Reisman and Stevick, *supra* note 24, at 117–124.

⁴⁰ Müller and Müller, 'Sanctions of Mass Destruction', 78 *For. Aff.* (1999) 3, at 49.

⁴¹ SC Res. 1333 (2000); this resolution strengthens sanctions already imposed in SC Res. 1267 (1999).

secure humanitarian law and human rights, and to suppress terrorism. Humanitarian exceptions exist for each of the targets — the travel ban does not apply to religious pilgrimages, for example. Nevertheless, an Afghan official stated after the vote that the ‘sanctions . . . will aggravate the problems of the common Afghan people because almost 70 percent of the Afghan population have been grappling with malnutrition and hunger as a result of the drought situation in the country and UNSC previously imposed sanctions.’⁴²

Rather than abandoning sanctions, the Security Council has sought to make them ‘smarter’, more targeted, with greater exceptions for humanitarian needs.⁴³ The Secretary-General must report on the humanitarian impact of sanctions now. He reported in March 2001 that the sanctions on Afghanistan had had by then no adverse humanitarian impact.⁴⁴ The popular pressure against sanctions is receding. The international community apparently supports Security Council measures of the type against Afghanistan and the ones imposed on the diamond trade in Liberia.⁴⁵ These are likely to be less effective than comprehensive sanctions,⁴⁶ yet they meet a legal standard that balances the injury with the corresponding measure.⁴⁷

Is the Security Council bound to meet a standard of proportionality or any other standard in how it imposes sanctions? That is the ongoing debate resulting from 10 years of sanctions against Iraq. Some international lawyers maintain that the Security Council is not legally bound by any international law standards in the imposition of sanctions. This position is founded on the view that nothing in the Charter explicitly binds the Security Council to meet any general requirements of international law and that in the maintenance of international peace and security, the Security Council is particularly free to act.

Yet, this position would appear to contradict Article 24(2) of the Charter which provides that: ‘In discharging [its] duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to

⁴² ‘National: Afghan Govt. Pulls Out of Talks with Opposition, Protests Sanctions’, *Pak. Press Int’l Info. Serv. Ltd.*, 2000 WL 30047543, 20 Dec. 2000; ‘Off-Target Sanctions’, *Boston Globe*, 26 Dec. 2000, 2000 WL 3356913.

⁴³ See, e.g., ‘Speakers Call for Clearer Definition, Tighter Targeting of UN Sanctions as Council Draws on “Lessons Learned” to Refine Sanctions’, SC Press Release 6845, 17 April 2000. Britain and the United States pressed for more targeted sanctions against Iraq in the summer of 2001. Ironically, the regime of Saddam Hussein preferred the old sanctions to smart sanctions because cheating is easier. ‘US Plan for Smart Sanctions Must be “Nipped in the Bud,” Iraq’ *Agence Fr. Press*, 14 May 2001, 2001 WL 2405528.

⁴⁴ Report of the Secretary-General on the Humanitarian Implications of the Measures Imposed by Security Council Resolutions 1267 (1999) and 1333 (2000) on Afghanistan, UN Doc. S/2001/241 (20 Mar. 2001).

⁴⁵ SC Res. 1343 (2001).

⁴⁶ Hulbauer and Oegg, *supra* note 31, at 17.

⁴⁷ Even regarding Iraq, sympathies may change. ‘From June to December 2000 . . . Saddam could have spent \$7.8 billion he received from UN-approved oil sales on food and medicine for his people. Instead he spent only \$4.2 billion.’ Ignatief, ‘Bush’s First Strike’, 48 *NY Rev. of Books* (29 Mar. 2001) 6, citing Friedman, ‘Saddam Has Won the Propaganda War, So Change Tactics’, *Int’l Herald Trib.*, 7 Feb. 2001. In the summer of 2001, the Iraqi regime rejected the proposal to replace comprehensive sanctions with targeted sanctions. *Supra* note 43.

the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.' Delbrück, relying on Kelsen, interprets Article 24(2) as a requirement that the Security Council conform with the Charter, not general international law.⁴⁸ Other supporters of the no-limits position cite a statement of the Secretary-General, repeated in the ICJ Advisory Opinion on Namibia: '. . . [T]he Members of the United Nations have conferred upon the Security Council powers commensurate with its responsibility for the maintenance of peace and security. The only limitations are the fundamental principles and purposes found in Chapter I of the Charter.'⁴⁹ Chapter I, Article 1(1) does refer to international law, stating that a purpose of the UN is 'to bring about by peaceful means, and *in conformity with the principles of justice and international law*, adjustment or settlement of international disputes'. Wolfrum contends that the reference to justice and international law is only a reference to the basis of any peaceful settlement, not how the Security Council conducts business. He also relates that a proposal made in San Francisco to link the maintenance of international peace and security to international law was rejected because it might unduly hinder the work of the Council if it had to determine international legality before responding to a breach of the peace.⁵⁰

Members of the Security Council, however, never embraced the view that general international law does not apply to its conduct. Judge Ad Hoc Sir Elihu Lauterpacht in the *Bosnia* case made the compelling argument that satisfies most on the question whether principles of general international law apply to Security Council conduct, even if not set out explicitly in the Charter. '[O]ne only has to state the proposition thus — that a Security Council Resolution may even require participation in genocide — for its unacceptability to be apparent.'⁵¹ Judge Weeramantry expressed a similar view in the *Lockerbie* case: 'The history of the United Nations Charter corroborates the view that a clear limitation on the plenitude of the Security Council's powers is that those powers must be exercised in accordance with well-established principles of international law.'⁵² In the *Reparations* case, too, the Court emphasized that the UN has both rights as well as responsibilities beyond the specific provisions of the Charter. It said rights and responsibilities would evolve with time influenced by the UN's 'purposes and functions as specified or implied in its constituent treaty developed in practice'.⁵³

The United Nations has now explicitly acknowledged that it is restrained by general principles of humanitarian law when acting under Chapter VII in relation to the use of

⁴⁸ Delbrück, 'Article 24', Simma, *supra* note 3.

⁴⁹ *Legal Consequences for States of the Continuing Presence of South Africa in Namibia*, ICJ Reports (1971) 16.

⁵⁰ Wolfrum, 'Article 1', in Simma, *supra* note 3, at 52.

⁵¹ *Application of the Convention on the Prevention and Punishment of Crime of Genocide (Bosnia & Herz. v. Yugo. (Serbia and Montenegro))*, ICJ Reports (1993) 325 (Sept. 13).

⁵² *Case Concerning Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v. U.S.), (Libya v. U.K.)* ICJ Reports (1992) (Request for Provisional Measures) (dissenting opinion of Judge Weeramantry) 114, at 174–176.

⁵³ *Ibid.*, at 180; see also Gowlland-Debbas, 'The Relationship between the International Court of Justice and the Security Council', 88 *AJIL* (1994) 643, at 667.

armed force.⁵⁴ No provision of the Charter requires the Security Council to comply with humanitarian law when armed force is used under UN auspices. Even before the explicit acknowledgement, however, Schindler never doubted that customary humanitarian law applied to the UN.⁵⁵ Gardam, too, had argued that the Security Council must respect the customary principles of international humanitarian law, including necessity, proportionality and distinction, both in the decision to authorize force and in the way force is used when authorized.⁵⁶ For her, the inclusion in Charter Article 24 of the Security Council's need to observe international law can only be interpreted as mandating Council respect for humanitarian law.

If the Security Council must respect the appropriate general law limitations on its conduct, what limits are there for sanctions? Although Reisman, Gardam and others have formulated arguments that the appropriate restraints are found in fact in humanitarian law, human rights advocates argue that the Security Council has obligations under human rights law.⁵⁷ Claims have even been made that the sanctions on Iraq violate the prohibition on genocide and that the Security Council as an organization has committed the gravest offence known to humanity.⁵⁸

As this last example suggests, the problem with trying to apply human rights law to the Security Council is that the imposition of sanctions far from meets the elements of a human rights violation. Even if it did, it is not clear that the international community would want sanctions removed in all cases, which would have to follow a finding that they violate human rights. Nor is any mention made of holding individual members of the Security Council accountable for voting in favour of sanctions. According to Marks:

Senders of sanctions cannot be held responsible unless they intentionally seek to violate the rights in question or pursue policies that are so blatantly harmful to those rights that they fail to meet a minimum standard of compliance. The humanitarian exemptions that have been voted with sanctions in almost every case, and the supplemental humanitarian assistance programs funded by the 'senders,' as well as their public statements of concern for the plight of civilian populations, make it difficult to find willful intent on the senders' part.⁵⁹

⁵⁴ Observance by United Nations Force of International Humanitarian Law, UN Doc. ST/SGB/1999/13 (6 Aug. 1999).

⁵⁵ Schindler, 'United Nations Forces and International Humanitarian Law', in C. Swinarski (ed.), *Studies and Essays on International Humanitarian Law and Red Cross Principles* (1984) 521, at 526.

⁵⁶ Gardam, 'Legal Restraints on Security Council Military Enforcement Action', *17MJIL* (1996) 285, at 318.

⁵⁷ Angelet, 'International Law Limits to the Security Council' in V. Gowlland-Debbas (ed.), *United Nations Sanctions and International Law* (2001) 71, at 75–77; Clapham, 'Sanctions and Economic, Social and Cultural Rights' in *ibid*, 131 at 136; Fishman, 'Between Iraq and a Hard Place: The Use of Economic Sanctions and Threats to International Peace and Security', *13 Emory Int'l L. Rev.* (1999), 687, at 716; Center for Economic and Social Rights, *supra* note 38.

⁵⁸ See, e.g., Bossuyt, 'The Adverse Consequences of Economic Sanctions for the Enjoyment of Human Rights' (Working Paper for the Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Review of Further Developments in Fields with Which the Sub-Commission has been or may be Concerned, UN Doc. E/CN.4/Sub.2/2000/33 (21 June 2000), at 18; see also Fishman, *supra* note 58, at 721–723.

⁵⁹ Marks, 'Economic Sanctions as Human Rights Violations: Reconciling Political and Public Health Imperatives', *Am. J. Pub. Health* (1999) 1509, at 1511.

Definitions of genocide, torture, racism or other violations of human rights require an intention to commit the violation.⁶⁰ Unintended consequences are not human rights violations. As discussed in Section 2 above, the early post-Cold War sanctions responded to criticism that the Council was not doing enough to promote human rights, self-determination and democracy. The comprehensive nature of the early regimes also responded to popular pressure to apply measures with 'teeth' to accomplish humanity's loftiest goals. The Security Council does not have the intention of eliminating or torturing the Iraqi people. If it did or if knowledge of unintended consequences rose to the level of intention, sanctions would have to be eliminated as a tool of law enforcement. Human rights violations are not legitimate sanctions.⁶¹

Rather than finding sanctions a violation of human rights law per se, Security Council members have characterized sanctions as law enforcement tools to which a standard of humanitarianism applies: '[I]f it is the case that the Security Council cannot require States to breach fundamental humanitarian values in the sanctions regimes it imposes on States, it is surely anomalous to regard it as able to do so itself.'⁶² Sanctions to enforce the prohibition on the use of force, on the possession of chemical and biological weapons, or to promote human rights, do not fall neatly in the category of conduct regulated by human rights law. When sanctions are used for law enforcement the community authorizes a certain amount of force in derogation to the norm, to ensure compliance or respect for the community's rules. The humanitarian law of armed conflict fits the law enforcement context more closely than the law of human rights. Humanitarian law regulates otherwise unlawful behaviour resorted to in response to a prior wrong. This law mandates limits beyond which the state or organization authorized to use force may not go, even in the pursuit of legitimate ends.

The principles of necessity, proportionality and distinction form the central customary law principles of international humanitarian law.⁶³ Necessity refers to military necessity, and the obligation that force is used only if necessary to accomplish a reasonable military objective.⁶⁴ Proportionality prohibits force 'which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian

⁶⁰ The Genocide Convention defines genocide in Article II as '[A]ny of the following acts committed with intent to destroy, in whole or in part, a national ethnical, racial or religious group, as such: (a) Killing members of the group . . . ' 9 December 1948, 78 UNTS 277. The Torture Convention defines torture as ' . . . any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information . . . ' 10 December 1984, 23 ILM 1027, as modified, 24 ILM (1985) 535.

⁶¹ The human rights debate has focused on intention, but it would seem highly relevant to also consider causation in relation to, for example, the oil-for-food programme. See *supra* note 48. If Iraq can buy food, but will not until sanctions are lifted, should we hold the UN or Iraq responsible for hunger? Causation principles, as well as fault standards, remain underdeveloped in international law.

⁶² SC Press Release 6845, 17 April 2000, *supra* note 42.

⁶³ Meron, 'The Continuing Role of Custom in the Formation of International Humanitarian Law', 90 *AJIL* (1996) 238, at 240; Greenwood, 'Scope of Application of Humanitarian Law', in D. Fleck (ed.), *The Handbook of Humanitarian Law in Armed Conflicts* (1995) 30–33. Reisman and Stevick, *supra* note 24, at 94–95.

⁶⁴ Reisman and Stevick, *supra* note 24, at 94.

objects, or a combination thereof, which would be excessive in relation to concrete and direct military advantage anticipated'.⁶⁵ Finally, distinction means those not taking part in the fighting may not be deliberately targeted.⁶⁶ Reisman and Stevick argue that these principles apply equally to UN sanctions and that the failure to apply them before now is owing to 'the incorrect assumption that only the military instrument is destructive'.⁶⁷

Analysing sanctions as weapons is reasonable. Moreover, the United Nations has accepted that it is bound by international humanitarian law.⁶⁸ The Security Council's practice reflects an understanding that it must observe humanitarian limits in its application of sanctions.⁶⁹ And as the Afghan, Liberian, and most recent Iraqi sanctions debates show, the Security Council is trying to observe some sort of restraints in how it uses sanctions. It is using targeted or 'smart sanctions', presumably in response to the outcry over the inhumane impact of comprehensive sanctions.

It is understandable, therefore, that international lawyers thinking about the regulation of sanctions have turned to humanitarian law.⁷⁰ These principles are well known to the international community and their notoriety has no doubt aided in winning their acceptance to some extent by the Security Council. Still, there is not an exact fit here either. The application of humanitarian law has been by analogy because humanitarian law does not squarely apply to sanctions. The core principles of customary humanitarian law apply to hostilities. Humanitarian law, particularly the principles of necessity, proportionality and distinction, have evolved to provide limits during actual hostilities. There is no ongoing fighting between the UN and the targets of sanctions.⁷¹ The very point of using economic sanctions is because if they kill, it is in a different way than weapons do. Not just the Security Council but many in the international community will resist the treatment of economic sanctions as weapons. The system needs enforcement short of armed force.

Nor are humanitarian law rules in all cases appropriate for economic sanctions.

⁶⁵ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 12 December 1977, Art. 51, para. 5, 1152 UNTS 3. 'In the law of armed conflict, the notion of proportionality is based on the fundamental principle that belligerents do not enjoy an unlimited choice of means to inflict damage on the enemy.' Gardam, 'Proportionality and Force in International Law', 87 *AJIL* (1993) 391.

⁶⁶ Meron, *supra* note 63, at 240.

⁶⁷ Reisman and Stevick, *supra* note 24, at 95.

⁶⁸ Marks also points out that part of the difficulty of applying human rights law to the Security Council is that the Council is party to no human rights convention, nor has it acknowledged that it is subject to the conventions. *Supra* note 60.

⁶⁹ Gowlland-Debbas, 'Security Council Enforcement Action and Issues of State Responsibility', 43 *ICLQ* (1994) 55, at 92–94.

⁷⁰ Reisman and Stevick, *supra* note 24, at 127; Gardam, *supra* note 65, at 298.

⁷¹ The US and Britain are using force to enforce certain aspects of SC Res. 687 and to the extent that they are using force, the law of armed conflict applies. It may be, therefore, that the application of armed conflict rules to regulate the sanctions in all their applications to Iraq makes sense. On the other hand, the use of sanctions to force Iraq to abandon weapons of mass destruction is to avoid the use of armed force for that purpose. This aspect of the sanctions is closer to the situations prevailing in Afghanistan and Liberia.

Exceptions to the central principles of humanitarian law should not apply in the sanctions context if the purpose in applying the law is to mitigate the inhumanity of sanctions. Yet, the discourse surrounding humanitarian law and references to sanctions as weapons has created the impression that both the rules and their exceptions apply. Humanitarian law is based on the concept that antagonists are both armed and pose a danger to each other. Some limits are placed on the harm they can do, but if licence is taken with those limits, such as placing guns in civilian homes, the protections are lost.⁷² This scenario is doubtless in the minds of those who believe that the suffering of the Iraqi people can only be blamed on Saddam Hussein. Saddam Hussein has put his own people in danger, and, thus, they have lost their immunity. Since the Security Council is not in immediate danger, however, there is no reason for non-targets to lose their immunity in the sanctions context.

The proportionality principle in humanitarian law also embraces a kind of exception. Proportionality requires weighing the amount of force needed between the military target and the cost to civilians. The proportionality principle permits escalating the amount of force used if the legitimate military objective cannot be obtained with less. Few would support the legality of escalating sanctions which are already considered inhumane.

The disadvantages of using humanitarian law to regulate sanctions have motivated the search for more appropriate legal standards. The law of countermeasures has evolved to apply to the very case of measures short of armed force. The law of countermeasures was once part of the law of war and is appropriate for regulating highly coercive, otherwise unlawful conduct. Countermeasures law has continued to adapt to the non-war setting and provides a set of appropriate standards that are equally applicable to multilateral and unilateral measures. These rules are not as well known as human rights or humanitarian law. NGOs concerned about Iraqi sanctions focus on human rights and humanitarian law, while countermeasures rules are far from their focus. Thus, countermeasures rules have understandably been overlooked in the search for the generally applicable law for Security Council sanctions, at least until recently. The law of countermeasures developed to respond to the case of unilateral state action, but humanitarian law principles also originally applied only to states and now apply to organizations and individuals. Countermeasures would appear equally adaptable. Kirgis, Bothe, and Gowlland-Debbas have all suggested the applicability of core aspects of countermeasures rules to Security Council action.⁷³

The first authoritative definition of countermeasures after the adoption of the

⁷² Schindler and Toman, *supra* note 56.

⁷³ Kirgis, 'The Security Council's First Fifty Years', 89 *AJIL* (1995) 506, at 517 and note 87. '... [T]he Security Council in a chapter VII situation should respect the principle of proportionality — or what might better be described as the principle of avoiding excessive disproportionality' (citing Bothe: '*Il est donc possible de conclure que le principe de la proportionnalité constitue en effet un principe général qui limite l'exercice de certains pouvoirs de l'autorité publique.*' Bothe, '*Les Limites des pouvoirs du Conseil de Sécurité*', in R.-J. Dupuy (ed.), *The Development of the Role of the Security Council* (1993) 67, at 78); see also, Gowlland-Debbas, *supra* note 70, at 91.

Charter is found in the *Air Services* arbitration. The arbitrators defined countermeasures as measures ‘contrary to international law but justified by a violation of international law allegedly committed by the State against which they are directed. . . .’⁷⁴ This definition leaves out negative measures not contrary to law, once commonly referred to as ‘retorsions’. Following *Air Services*, the UN’s International Law Commission (ILC) has devoted considerable attention to countermeasures.⁷⁵ The ICJ took them up in the *Gabcikovo-Nagymaros* case,⁷⁶ and the World Trade Organization, also following *Air Services*, has analysed them in an adjudication over banana imports between the United States and the European Union.⁷⁷

From all of these authoritative sources, two central principles of the law of countermeasures emerge: they must be used only in appropriate circumstances, i.e., to respond to a wrong, and they must be proportional to the injury suffered.⁷⁸ Proportionality is measured against the injury. In discussing the requirement of proportionality, the ICJ has said, ‘an important consideration is that the effects of a countermeasure must be commensurate with the injury suffered taking into account the rights in question.’⁷⁹ Measuring by the injury rather than the wrong prevents the harm done by countermeasures from outweighing the harm of the original wrong. The WTO uses the same concept by requiring ‘equivalence’ between injury suffered and measures in response.⁸⁰

No formula exists for determining what actually is proportional. Indeed, only reciprocal countermeasures can be considered entirely equivalent. Zemanek proposed regulating countermeasures by prohibiting unwanted countermeasures rather than judging them by proportionality.⁸¹ A proportionality standard, however, curtails

⁷⁴ *Air Services Agreement Case (U.S. v. Fr.)*, 18 RIAA (1978) 416, para. 83. See also, Doehring, ‘The Unilateral Enforcement of International Law by Exercising Reprisals’, in R. St.J. Macdonald (ed.), *Essays in Honor of Wang Tieya* (1994) at 235–236; E. Zoller, *Peacetime Unilateral Remedies* (1984).

⁷⁵ United Nations International Law Commission, Report on the Work of its 52nd Session (1 May–9 June and 10 July–18 August 2000), GAOR 55th Sess., Supp. No. 10 (A/55/10), paras 290–404.

⁷⁶ *Case Concerning the Gabcikovo-Nagymaros Project (Hungary v. Slovakia)* ICJ Reports (1998) 1, at 47 (paras 82–87) (Judgment of 25 September 1997).

⁷⁷ *Banana Dispute between the EU and US*. WTO Secretariat, European Communities-Regime for the Importation, Sale and Distribution of Bananas: Recourse to Arbitration by the European Communities Under Article 22.6 of the DSU, Decision by the Arbitrators, WT/DS27/ARB (April 9, 1999); see also, E-U. Petersmann, *The GATT/WTO Dispute Settlement System: International Law, International Organizations and Dispute Settlement* (1997).

⁷⁸ *Gabcikovo-Nagymaros Project* case, *supra* note 76, paras 83–87.

⁷⁹ *Ibid.*, at para. 85; *Air Services Case*, *supra* note 73, paras 83, 90. ‘Countermeasures must be commensurate with the injury suffered, taking into account the gravity of the internationally wrongful act, and the rights in question.’ Titles and Texts of the Articles on State Responsibility for Internationally Wrongful Acts provisionally adopted by the Commission on second reading, UN Doc. A/CN.4/L.602 (OR.1 included, 31 May 2001), available at <<http://www.law.cam.ac.uk/rcil/ilcsr/statresp.htm>>, art. 51. See also, Crawford, ‘The Relationship between Sanctions and Countermeasures’, in Gowlland-Debbas, *supra* note 58, at 57. ‘[L]awful countermeasures are not out of proportion to the violation and the injury suffered.’ Restatement (Third) of American Foreign Relations Law, sec. 905(1)(b).

⁸⁰ See also Cannizzaro, ‘The Role of Proportionality in the Law of International Countermeasures’, 12 *EJIL* (2001) 889. He talks about both ‘qualitative’ and ‘quantitative’ equivalence.

⁸¹ Zemanek, ‘The Unilateral Enforcement of International Obligations’, 47 *ZaöRV* (1987) 32.

discretion by requiring that the means used are not manifestly inappropriate to the situation.⁸² While some potential measures can clearly be set aside, even a *prima facie* permissible measure could still become objectionable in certain situations. Thus, grappling with proportionality in each case and over time results in 'protecting the subjective interest of the wrongdoer against overreaction, [and] also expresses the need of the international legal order to establish a legal process regulating the nature and of the response to wrongful conduct'.⁸³ The indeterminacy of proportionality is, nevertheless, a disadvantage in this form of restraint for Security Council sanctions. Yet, the Secretary-General and sanctions committees charged with implementing sanctions can assist in the search for proportionality. They can be guided in weighing injury and equivalent response by the basic notions of humanitarianism described by Craven.⁸⁴ Moreover, indeterminacy provides some flexibility to the Security Council, which it can surely use in fulfilling its responsibilities.⁸⁵

For some, another disadvantage of countermeasures proportionality, is that measures must remain proportional to the original wrong. Only when the wrongdoer commits new wrongs may more or different measures be taken. If through some action of a leader the measures are no longer proportionate to the wrong, the countermeasures should be adjusted. Retaining proportionality is the key in the law of countermeasures. This rule may seem unfair to the injured party or, in the case of the Security Council, the party authorized to seek enforcement of important international norms. Yet, to prevent escalation of disputes and possible abuse by the responding party, the rule is simple and clear: the response must remain proportional to the original wrong.

Practice reveals that the one help to the responding party is that it may keep the measures in place for years, even decades. Escalation is not allowed, persistence is. Thus, Mexico applied proportionate countermeasures for over 50 years in its dispute with the US over the US failure to honour an arbitral award finding title for Mexico over territory known as El Chamizal.⁸⁶ Mexico did not escalate the measures after years of non-compliance. Rather it withheld payments it owed in another arbitration, refused to cooperate in negotiating certain new agreements, and took other proportionate measures until President Kennedy finally agreed to implement the award. The United Kingdom provides a similar example in the case of Albania's failure to implement the ICJ award in the *Corfu Channel* case. The UK froze Albanian monetary gold for almost 50 years until Albania agreed to pay the award.⁸⁷ The US sanctions on Europe in the *Banana* dispute remained at the level of equivalence to the injury, even when it became clear that the EU would not comply with its obligations. After two years of measures, the US and EU settled the dispute on a basis less

⁸² Cannizzaro, *supra* note 80.

⁸³ *Ibid.*, at 890.

⁸⁴ Craven, this issue, at 43.

⁸⁵ Howse, this issue, at 89.

⁸⁶ Jessup, 'El Chamizal', 67 *AJIL* (1973) 423.

⁸⁷ Norton-Taylor, 'Bank Returns Looted Nazi Gold to Albania', *Guardian*, 30 October 1996, 1996 WL 13384395.

favourable to the US than the WTO Dispute Settlement Body had determined was appropriate.⁸⁸

Countermeasures proportionality is not connected with a standard of effectiveness in the way that humanitarian law is. Thus, if the sanction has no chance of accomplishing the goal, military necessity would forbid its use. Or should the measures fail to achieve the cessation of the wrong or reparation, necessity would permit a stronger response. No stronger response is permitted in countermeasures.⁸⁹ The potential effectiveness of the measures is not a fundamental criterion. This may be because countermeasures send an important signal, even if they do not effect compliance. Plus, it is hard to judge at the outset whether a sanction will be effective or not. Some sanctions take a very long time. Hufbauer and Eliot tell us that in two-thirds of the cases they never work. That figure may well be too low for meeting the standard of military necessity, but may be high enough for countermeasures, since sanctions accomplish more than simply inducing compliance. Success in one third of cases is probably higher than most in the international community have realized.

Countermeasures proportionality may require modification over time. That is especially the case with Iraqi sanctions, since the initial basis for imposing them metamorphosed to other aims, in particular, responding to the possession of unlawful weapons of mass destruction. Wide, sweeping sanctions responded proportionally to Iraq's aggression against Kuwait, but responding to weapons violations required something less — an export-control process focused narrowly on weapons inputs, for example.

In addition, proportionality means that UN sanctions should focus on the wrongdoer. Persons who should be free of the effects of coercive sanctions do not lose their immunity because their leader fails to conform to the programme. The Charter sets out in Article 50 that states facing special economic problems in carrying out Security Council measures will be assisted.⁹⁰ Article 50 implies that countermeasures taken by the Security Council should avoid injuring innocent states and that where such states are injured, they should be assisted. Measures prohibited to states should be off-limits to the Security Council — diplomatic immunities should be respected, for example. Targeted sanctions, sanctions equating response to the threat or breach of the peace, should meet the requirements of countermeasures. Studies show that targeted sanctions are not as likely to be effective as comprehensive sanctions.⁹¹ Yet, the price of less effectiveness is acceptable for sanctions that meet a standard of proportionality.

In addition to proportionality, as international lawyers consider the law of countermeasures as a standard for UN sanctions, they may also take up the other

⁸⁸ 'US, EU, Finally Settle Banana Dispute', *Agence Fr.-Presse*, 11 April 2001, 2001 WL 2382532.

⁸⁹ But see Doebring, *supra* note 73, at 237.

⁹⁰ Article 50: 'If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.'

⁹¹ Hufbauer and Oegg, *supra* note 31.

fundamental question relevant to countermeasures: May the UN impose sanctions in the circumstances?⁹² In the course of debating proportionality, we could very well find ourselves back to 1966, once again discussing not *how* sanctions may be used, but *when*. The debate on the law of sanctions will then have come full circle.

In the meantime, it is clear that one of the most important developments in international law as a result of 10 years of measures on Iraq is the consensus that some legal standard applies to the application of Chapter VII sanctions. No Charter provision specifically spells out any standard for the proper application of sanctions. Nevertheless, the Security Council's own current practice, statements of the Secretary-General, commentary of international lawyers, and the positions adopted by relevant non-governmental organizations have coalesced around this consensus. The law of sanctions has changed after 10 years of measures against Iraq.

⁹² Cannizzaro, *supra* note 80; Gardam: 'Proportionality is a fundamental component of the law on the use of force and the law of armed conflict — the *jus ad bellum* and the *jus in bello*'; *supra* note 65, at 391.