

ECONOMIC SANCTIONS AND THE QUESTION OF CAUSATION

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It is well established that there exists a causal relationship between the imposition of economic sanctions and the plight of civilian population in the targeted country. This relationship is inherent to such measures (which consist in an attempt to cripple a nation's economy and thus impair the well-being of its members) and has been demonstrated empirically.

Whereas sanctioners conveniently gloss over what "crippling an economy" means in relation to the underlying population, they prefer to state that economic sanctions *cause* "unintentional" harm to the "most vulnerable" segments of a population.

An illustration of a statement of general causality is found in the report by the Humanitarian Panel established by the Security Council in 1999:

“Even if not all suffering in Iraq can be imputed to external factors, especially sanctions, the Iraqi people would not be undergoing such deprivations in the absence of the prolonged measures by the Security Council and the effects of war.”^[1]

Another illustration of causality is found in the General Comment No. 8 (1997) entitled “The Relationship Between Sanctions and Respect for Economic, Social and Cultural Rights”. In that General Comment, the UN Committee on Economic, Social and Cultural Rights states:

While the impact of [economic] sanctions varies from one case to another, the Committee is aware that they almost always have a dramatic impact on the rights recognized in the [International] Covenant [on Economic, Social and Cultural Rights]. Thus, for example, they often cause significant disruption in the distribution of food, pharmaceuticals and sanitation supplies, jeopardize the quality of food and the availability of clean drinking water, severely interfere with the functioning of basic health and education systems, and undermine the right to work. In addition, their unintended consequences can include reinforcement of the power of oppressive elites, the emergence, almost invariably, of a black market and the generation of huge windfall profits for the privileged elites which manage it, enhancement of the control of the governing elites over the population at large, and restriction of opportunities to seek asylum or to manifest political opposition.

The Security Council itself has acknowledged the causal link between the “prohibitions” on Iraqi foreign trade and the “humanitarian situation” in Iraq. In Resolution 1284 (1999), para. 33, the Council

[e]xpresses its intention to, upon receipt of reports from...UNMOVIC and from...IAEA...to suspend with the fundamental objective of improving the humanitarian situation in Iraq...prohibitions against the import of commodities and products originating in Iraq, and prohibitions against the sale, supply and delivery to Iraq of civilians commodities and products...^[2]

The proposition that economic sanctions adversely affect the living conditions of civilians in targeted countries is clearly not in dispute. Economic sanctions are a causal

[1] Report of the second panel established pursuant to the note by the president of the Security Council of 30 January 1999 (S/1999/100), concerning the current humanitarian situation in Iraq para. 45, at <http://www.casi.org.uk/info/panelrep.html#III.Assessment%20of%20the%20humanitarian%20situation>

[2] UN Security Council Resolution 1284 (1999) of 17 December 1999.

factor for the humanitarian conditions in sanctioned countries. In order to determine responsibilities for civilians' plight, it is not sufficient to state that economic sanctions do *some* harm. It is necessary to relate specific harm to specific conduct, that is establish a chain of causation.

Linking individual injury to macro-economic policies, of which economic sanctions are a subset, is not easy. This difficulty has not, however, deterred States or international organizations in the past from awarding compensation to millions of individuals for injuries inflicted in a collective, rather than, individual manner.[3]

We will below examine the various difficulties in establishing causation between the imposition of economic sanctions and the ultimate injury experienced by individuals. These difficulties should not, however, be perceived as a theoretical barrier to the attribution of civil and criminal liabilities to those who have caused the harm.

Unreliability of baseline indicators

In order to demonstrate that a macro-economic measure has caused an improvement or a decline of a particular humanitarian indicator (such as mortality or literacy rates), a comparison with a baseline of that indicator prior to the imposition of the measure should be made. When such an indicator does not exist, or its reliability is questionable, it becomes difficult, if not impossible, to properly determine the effects of the measure.

International organisations, powerful states and various non-state entities collect huge amounts of economic, military, demographic, humanitarian and other data on virtually every country. Since the advent of computers and telecommunications, such information is increasingly accessible, though not always at the required level of detail and reliability. Sometimes such information exists but is not publicly revealed by those who collect it, for either commercial or strategic reasons.

Although a handful of countries have remained extremely secretive regarding their national statistics, even in their case, macro-economic information, demographic statistics and statistics on socio-economic indicators have been generally available for a long period of time. Information on the vulnerability of each country to foreign trade and credits are collected by the IMF, the US State Department, the CIA and others. UN agencies such as UNICEF, UNESCO, FAO, WHO and UNDP, regularly compile statistical reports on member states in their particular sphere of competence.

It can be expected that the reliability and availability of baseline humanitarian indicators from around the world will continue to improve in the future and therefore facilitate the assessment of effects of macro-economic policies, including adverse ones, such as economic sanctions.

Difficulties in linking macro-economic policies to specific consequences

As economic sanctions are a macro-economic measure, their specific consequences cannot always be foreseen nor determined with precision. A complex web of causal chains leads from the decision to impose a macro-economic policy and the ultimate consequences experienced by individuals affected by the policy. This web of causalities is illustrated on the following page.

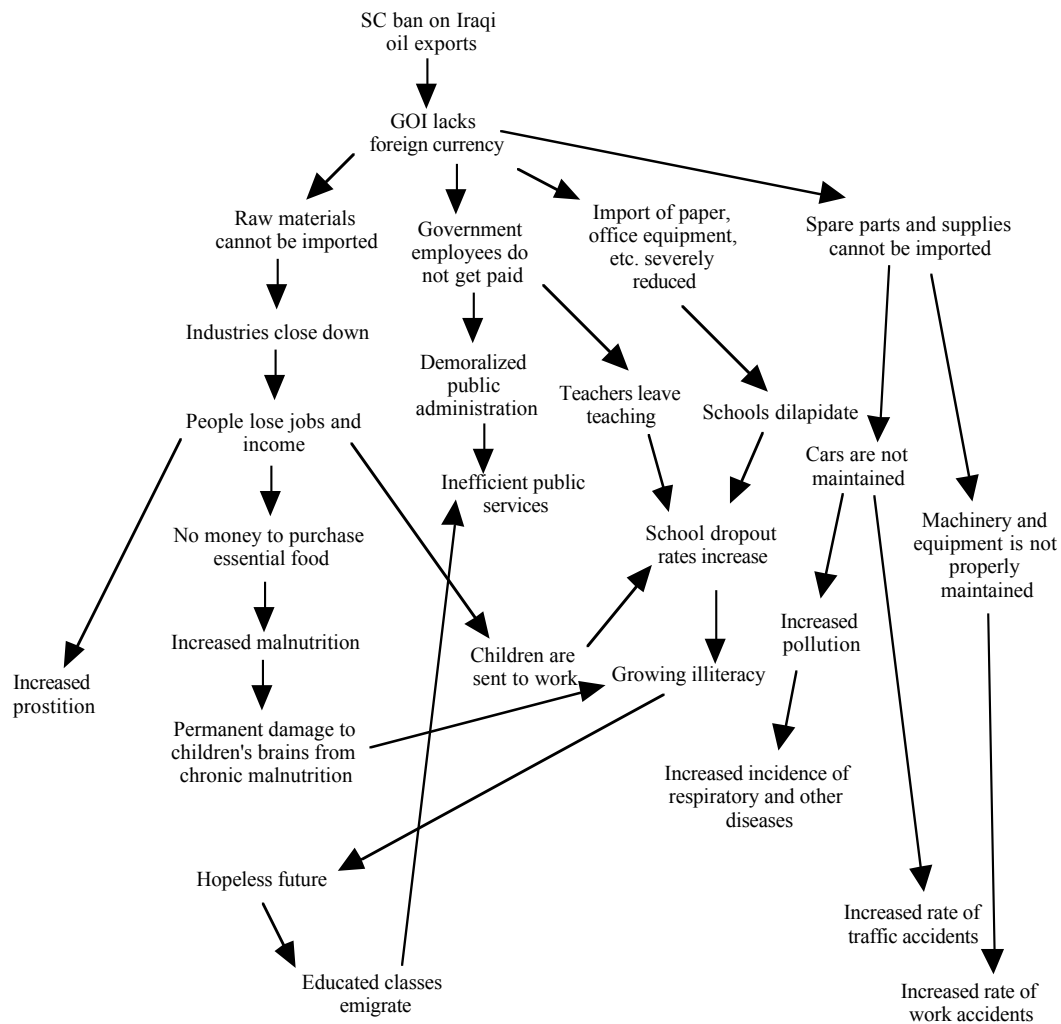
In the case of economic sanctions, *deliberately* imposed to cause severe damage to a national economy, neither the length of the causal chain between the original decisions

[3] Mass tort cases in U.S. courts; the German compensation regime to victims of Nazi persecution; the U.N. compensation regime for victims of the Iraqi invasion and occupation of Kuwait, are the most known examples.

and the injurious consequences to individuals nor the existence of “intermediary abnormalities” would in principle negate causation.[4]

For example, a policy of denying essential supplies for water-purification in a particular country initiates a causal chain likely to produce water-borne diseases and the risk of death: A causal link is thus established between the decision of denying such supplies and the diseases (or death) resulting from drinking contaminated water in that particular country. That a young person, for lack of alternatives, information or parental supervision, drinks water contaminated as a result of trade ban on chlorine imports, and subsequently dies, does not disrupt the causal chain.

Illustration of some causation chains with regard to the ban on Iraqi oil exports



The existence of contributory factors and coexisting circumstances may affect causation in various ways. Premature death of ill patients expected to die from their disease, is attributable to the sanctions if their premature death resulted from shortages created by the sanctions which would have “hastened” the onset of death.[5] The same argument

[4] “[W]e do not hesitate to trace the cause back through even very abnormal occurrences if the sequence is deliberately produced by some human agent” (HLA Hart & Tony Honoré, *Causation in the Law*, 2d ed. Clarendon Press, Oxford (1985), p. 43

[5] “[A] person is deemed to have committed homicide, although his act is not the immediate or not the sole cause of death, if by any act he hastens the death of a person suffering under any

might be adduced in relation to measures implemented by the government of a sanctioned country that would intentionally exacerbate the adverse effects of the sanctions. Governments possess, however, a wide margin of discretion in prioritizing their policies. Thus, not every adverse effect of government policies resulting from their response to economic sanctions would override the causality chain.

In its report “WHO’s humanitarian activities in Iraq under SCR 986” of April 1998, the World Health Organization refers to electricity plants and water purification plants in Iraq, destroyed in the six-week war in 1991, as “public health facilities”, the destruction of which disrupted “partially or completely provisions of regular health services.”[6] Such statement illustrates the need, when imposing macro-economic deprivation, to consider the integrated nature of a civilian economy.

Another approach to causality is to classify determinants of harm into three key *levels*: immediate causes, underlying causes and basic causes. Pellett notes, for example, that the *immediate causes* for malnutrition could be “food intake and health”, the *underlying causes* could be “income, land, water, fuel, education and health service availability”, and the *basic causes* could be “resources, economics, politics”.[7]

Reliability of data on losses, damages and injuries

The capacity of a government subjected to comprehensive economic sanctions, to compile timely and reliable statistics on socio-economic conditions, health and education, may be severely impaired by such measures. A government prevented from importing paper, office equipment and supplies, computers[8] and telecommunications equipment[9], cannot be expected to maintain high standards of national statistics, necessary for proper governance.

Another reason for the lack of reliable data on the Iraqi economy was mentioned by an unnamed Iraqi economist, interviewed by Reuters, namely the reluctance of the Government of Iraq of providing “any data for fear it would be beneficial to the enemy.”[10] Such a fear is not unreasonable, considering the use made by the U.S. Government of trade and industrial intelligence on Iraq, to target the most vulnerable sectors of Iraqi socio-economic life, such as food security, the electricity system and water-treatment.[11]

Three distinct but synergic modes of macro-economic deprivation

disease or injury which apart from such act would have caused death.’ Stephen, *Digest*, art. 262 (d), cited by Hart and Honoré (1985), p. 343

[6] WHO’s website: <http://www.who.int/eha/>

[7] Peter L Pellett, *Sanctions, Food, Nutrition, and Health in Iraq*. In: *Iraq under siege: The deadly impact of sanctions and war*. (Arnove,Anthony, ed.) Pluto Press, London (2000), p.155

[8] On 4 July 2001 the Financial Times announced that the Sanctions Committee has finally given the “green light” for computers, “which until recently had been banned for fear of military use”.

[9] On 4 July 2001, the Financial Times (London) announced that the U.S. in what the UN called “a ground-breaking” move, unblocked five telecommunications contracts worth more than \$18.6 million, including one Chinese contract for nine digital exchange systems with 215,000 lines, which had been on hold since 1999.

[10] Reuters news, 4 September 2001

[11] The compilation by U.S. intelligence agencies of reports such as the Iraq Water Treatment Vulnerabilities study by the US DIA is such an example. See discussion in Elias Davidsson, *United States’ Foreseeability, Awareness and Knowledge of the Consequences of the Sanctions Against Iraq*, unpubl. manuscript (2004), pp. 4-6

A few observations are in order regarding the three major modes through which macro-economic deprivation of a civilian population can be caused or mediated.

At the most general level, an effective ban on exports can deprive a State of financial resources to maintain adequate levels of administrative and public services, rehabilitate infrastructure facilities and develop the economy. By reducing the resources available to the Iraqi State, economic sanctions “significantly constrained Iraq's ability to earn foreign currency needed to import sufficient quantities of food”[12] and other humanitarian goods and thereby severely curtailed the ability of the Government to ensure the welfare of the population.

Another main form of deprivation, compounding the quantitative restrictions imposed on exports (and imports) is to restrict imports to limited categories of items. An example of deprivation with wide-reaching consequences would be an embargo on paper. Raw material such as paper is used for the production of newspapers, magazines, school books, application forms, physicians’ prescriptions, WC rolls, statistical reports, drawing plans, research papers, novels, musical scores, etc. An embargo on paper necessarily spawns a host of adverse consequences for individuals and the society as a whole.

Banned or restricted items under an embargo regime can be classified into two main categories: So-called non-essential items and so-called dual-use items. “Non-essential” items are those which Sanctions Committees determine that civilians can live without, for example ping-pong balls, lipstick, musical instruments, TV-sets. It is, obviously, contrary to democratic principles that unelected foreign officials decide what individuals in a far-off country should be allowed to obtain. Such measures constitute discriminatory treatment. So-called dual-use items are those which Sanctions Committees define as possessing a dual civil and military potential. There exist no universally recognized definition of what constitutes a “non-essential” or a “dual-use” item. Depending on the politics of Sanctions Committees and the personal whims of their members, the injury or harm caused by banning this or the other item, will increase or decrease.

Qualitative restrictions mean that even if a government could muster the necessary funds, it would be prevented from importing such items. Conversely, when items, such as food or medicines, are exempted from a trade ban, a government may lack funds for their import because its exports are restricted. The conjunction of quantitative and qualitative restrictions on foreign trade (and access to foreign funds) and their distinct effects are legally relevant with respect to responsibility[13].

Another measure that adversely affects individuals and families in sanctioned countries is restriction of *private* financial and trade transactions between “any person or body” in the targeted country and the outside world[14]. The consequence is that even when such private individuals possess assets abroad, they can not readily access these assets in order to secure their and their families welfare[15]. When such restriction on private transactions are included in provisions of economic sanctions, individuals' well-being in targeted countries is made increasingly dependent on the State .[16]

[12] <http://www.fao.org/WAICENT/faoinfo/economic/giews/english/alertes/srirq997.htm>

[13] Particularly with respect to foreseeability of harmful consequences.

[14] UN Security Council Resolution 661 of 6 August 1990, paras. 3-4

[15] Individuals in Iraq could theoretically request, through the Government of Iraq, that monies from their frozen accounts in other jurisdictions be released for “strictly medical or humanitarian purposes and, in humanitarian circumstances, foodstuffs.” There is no public evidence of such transactions. Due to breakdown of telephone communications, travel and the disruption of banking between Iraq and the outside world, private transactions were effectively barred.

[16] The irony is that leading Western powers, who promote globalization and privatization of the economy, have in the case of Iraq, strengthened the grip of the Iraqi State on the population and halted the emergence of private enterprise.