

THE CONCEPT OF HUMAN DIGNITY AND ECONOMIC SANCTIONS

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[Note. The following acronyms are used in this article: CESCR= UN Committee on Economic, Social and Cultural Rights; CRC=Convention on the Rights of the Child; ICCPR=International Covenant on Civil and Political Rights; ICESCR=International Covenant on Economic, Social and Cultural Rights; UNGA=UN General Assembly]

While economic sanctions aim indiscriminately at various national economies as a whole, the effects of the deprivation are experienced by individual human beings. Collective or abstract entities such as country, State or People, cannot experience pain or loss. Only individual living creatures can. Individual pain is thus an inevitable and foreseeable effect of economic sanctions, even if sanctioning parties prefer to turn a blind eye to the specific consequences of their conduct. Sanctioning parties generally claim that they merely target the state, not its residents. But by targeting the state, they deliberately attempt to impair the capacity of the state to ensure the basic rights of its residents. According to the law of causality, they remain the primary causal factor for the adverse consequences arising from the sanctions, regardless how the targeted state authorities respond to or cope with these measures.

Human dignity as the foundation of a human rights approach

Individuals are the possessors of fundamental human rights, which States and international organisations, have recognized[1] and pledged to respect[2]. While some of these rights are derogable in special circumstances, such as in states of emergencies[3], other rights are universally recognized as non-derogable and must be respected in all circumstances.

Rights can be violated by physical acts or through deprivation of entitlements. Shue observed with unusual discernment:

No one can fully, if at all, enjoy any right that is supposedly protected by society if he or she lacks the essentials for a reasonably healthy and active life. Deficiencies in the means of subsistence can be just as fatal, incapacitating, or painful as violations of physical security. The resulting damage or death can at least as decisively prevent the enjoyment of any right as can the effects of security violations. Any form of malnutrition, or fever due to exposure, that causes severe and irreversible brain damage, for example, can effectively prevent the exercise of any right requiring clear thought and may, like brain injuries caused by assault, profoundly disturb personality. And, obviously, any fatal deficiencies end all possibility of the enjoyment of rights as firmly as an arbitrary execution.

[...] People who lack protection against violations of their physical security can, if they are free, fight back against their attackers or flee, but people who lack essentials, such as food, because of forces beyond their control, often can do nothing are on their own utterly helpless[4].

[1] The term “internationally recognized human rights” refers to rights recognized by the overwhelming majority of States. The Universal Declaration of Human Rights vindicates the existence of “internationally recognized human rights” .

[2] For example by Articles 55 and 56 of the UN Charter

[3] The question whether the doctrine of “states of emergency” is applicable to UN sanctions will be dealt with separately.

[4] Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*, Princeton University Press, Princeton, New Jersey, (1996), pp. 24-25

A humanitarian[5] or *basic needs* approach[6] to individuals subject to economic sanctions is based on the discretionary beneficence of external parties. It is at best a caritative and at worst a condescending approach to human beings. A human rights based approach “recognizes beneficiaries as active subjects and claim-holders and establishes duties or obligations for those against whom a claim can be brought to ensure that needs are met.”[7].

The approach followed here is that of *solidarity* with victims of economic sanctions, which entails the recognition of their status as claim-holders of internationally recognized human rights derived from their inherent *dignity* as human beings[8]. This approach leads us to examine the consequences of economic sanctions in the light of universal *individual* and *substantive* human rights, including the right to life[9]; the right not to be subject to inhuman and degrading treatment[10]; the right to adequate standards of living including food, clothing, housing, medical care, necessary social services and social security[11]; the right to family life[12]; the right to work[13]; the right to health[14]; the right to education[15]; the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits[16]; and the right to receive information regardless of frontiers[17].[18] Typically, a single measure of deprivation may simultaneously violate several aforementioned rights. Impairment of the aforementioned rights may also contribute to the impairment of other rights, not listed above.[19] The right not to be subject to unlawful discrimination[20] is crucial to the enjoyment of all other rights.

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- [5] By a “humanitarian” approach we mean a regime of relief to helpless individuals.
- [6] By a “basic needs” approach we mean a situation in which unelected officials determine arbitrarily the needs of individuals.
- [7] A.-M. Lizin, independent expert, *Human rights and extreme poverty*, report to the Commission on Human Rights, 29 January 1999, UN Doc. E/CN.4/1999/48 #34 at 10
- [8] We follow here Hugo Slim’s approach, elaborated in *Not Philantropy But Rights: The Proper Politicisation of Humanitarian Philosophy*, *The International Journal of Human Rights*, Vol. 6, No. 2 (Summer 2002), pp.1-22. Slim lists as one of the advantages of a “humanitarian philosophy of rights” the argument that “at a personal level, rights dignify rather than victimize or patronise people” (p. 15).
- [9] ICCPR Art. 6(1), CRC Art, 6(2).
- [10] ICCPR Art. 7(1), CRC Art. 37
- [11] ICESCR Art. 11 (1), CRC Art. 27
- [12] ICESCR Art. 10(1)
- [13] ICESCR Art. 6 (1) and 6(2)
- [14] ICESCR Art. 12 (1) and 12(2), CRC Art. 24(1) , 24(2) and 24(4)
- [15] ICESCR Art. 13 (1), CRC Art. 28(1) and Art. 17
- [16] ICESCR Art. 15 (1) - 15(3), CRC Art. 31(2)
- [17] ICCPR Art. 19(2)
- [18] Paul Tavernier. "Sanctions Économiques Et Droits De L'homme." In *Nouvel ordre mondial et droits de l'homme*, edited by Paul Tavernier, 18-44. Editions Publisud; Université de Rouen, Centre de recherches et d'études sur les droits de l'homme et le droit humanitaire (CREDHO), 1993]. In his analysis, p. 40, Tavernier examines which human rights could be impaired by economic sanctions and suggests that they can all be affected, “directly or indirectly”
- [19] For example, the denial of the right to education may impair an individual’s capacity to enjoy his right to free expression and the capacity to improve one’s situation.
- [20] ICCPR Art. 2(1), Art. 24(1), Art. 26, ICESCR Art. 2(2), CRC Art. 2(1)

Individuals in sanctioned countries are also denied by sanctioning parties the enjoyment of their *procedural* rights. They are not provided by sanctioning parties – or by the international community - with any legal means to challenge the onslaught on their substantive rights to which they are subjected without their consent, nor are they afforded legal remedies for any loss they may have incurred from the sanctions[21].

The aforementioned substantive and procedural rights are enshrined in the Universal Declaration of Human Rights and in international and regional human rights treaties. Some of these rights, such as the right to be free from inhuman treatment and to the right from the arbitrary deprivation of life are deemed to have attained the status of peremptory norms *jus cogens*.

Impairing from outside a country's economy without the consent of its population, violates furthermore a number of *collective* or group rights, including the right of a people to self-determination, which encompasses a people's right to determine its own economic, social and cultural development[22]; the right of a people to freely dispose of its national wealth and resources[23]; and the collective right to development.[24] A ban on the export of commodities may constitute a serious impediment to the enjoyment of human rights by depriving a people of revenues needed to import essential items.[25]

In its General Comment No. 8 entitled “The relationship between economic sanctions and respect for economic, social and cultural rights” the UN Committee on Economic, Social and Cultural Rights observes:

While the impact of 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 Covenant. 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.[26]

Notwithstanding external constraints such as economic sanctions, structural adjustment programmes and even war, States are not absolved of their duties to respect, protect, facilitate and fulfil the human rights of individuals. At the very minimum and even under severe constraints, States may not engage in discriminatory policies in their exercise of protecting, facilitating and fulfilling human rights; they must prioritize scarce resources for the most vulnerable members of society, particularly children, regardless of circumstances. Such domestic obligations are independent from the duty of third states to refrain from undermining human dignity in other jurisdictions[27].

[21] ICCPR Art. 2(5)

[22] Common Article 1(1) to the ICCPR and ICESCR

[23] Common Article 1(2) to the ICCPR and ICESCR

[24] UN Charter Article 55, 56; UNGA Resolution 41/128; UNGA Resolution 54/175.

[25] Common Article 1(2) to the ICCPR and ICESCR provides that “[i]n *no case* may a people be deprived of its own means of subsistence.” (emphasis added). Nejjib Bouziri (in Tavernier (ed.), *supra* note 18, pp. 55-56, remarks that at the time of drafting the Covenants only one delegation voted against this provision (the United States).

[26] UN Doc. No. E/C.12/1997/8.CESCR of 5 December 1997 (para. 3)

[27] The duty of a State towards its own constituents does not absolve other states from their international obligation under the UN Charter to promote the universal respect for human rights and its converse, the obligation to refrain from knowingly undermine human rights in any jurisdiction.

Inherent dignity of the human person

What is the meaning of the expression “dignity of the human person” ? Isn’t such an expression subjective and dependent upon individual variables lacking normative value, or do fundamental criteria exist permitting to determine the scope of human dignity and when it is being violated ?

It cannot be contested that when pressed, the only rational base for the recognition of human dignity is utilitarian (“I respect others’ dignity in order that they respect mine”). The concept of human dignity transcends, however, utilitarian considerations, The foundation of the concept is to be sought in the age-old sacralisation of the human person. All major religions are inspired by, and defer to, the concept of human dignity. We believe that the conscience of the duty to respect human dignity is inherent to the human person. This can be demonstrated by the fact that considerable and systematic efforts are needed to break down the inherent humanity of soldiers when trained to torture or kill. Politicians who impose inhuman conditions of life on a population try to escape pangs of conscience by avoiding to see eye to eye the consequences of their acts. Such avoidance shows that conscious efforts must be undertaken to repress the inherent recognition of human dignity.

Attempting to establish the nature of human dignity, Oscar Schachter notes:

We do not find an explicit definition of the expression "dignity of the human person" in international instruments or (as far as I know) in national law. Its intrinsic meaning has been left to intuitive understanding, conditioned in large measure by cultural factors....In some situations an abstract definition is not needed; but it is not entirely satisfying to accept the idea that human dignity cannot be defined or analyzed in general terms....One general answer to our question is suggested by the Kantian injunction to treat every human being as an end, not as a means.[28]

Has the expression “human dignity” found its place in legal instruments and jurisprudence? While the term “human dignity” and its variants are not exactly defined, it is referred to in major legal documents, including the Preamble of the UN Charter[29] and numerous national Constitutions[30].

[28] Oscar Schachter, *Human Dignity as a Normative Concept*, 77 *American Journal of International Law* (1983), p. 849

[29] The UN Charter’s Preamble “reaffirm[s] faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.”

[30] Article 20 of the Angolan Constitution specifies that the “State shall respect and protect the human person and human dignity”. Article 23 of the Belgian Constitution links the right of everyone to “lead a life in conformity with human dignity” to economic, social and cultural rights. Article 1 of the Brazilian Constitution specifies that Brazil is “a Democratic State and is founded [inter alia] on...the dignity of the individual”. The Constitution refers to the concept of human dignity in several articles, linking dignity to the relation of a person to society and to social justice. Thus Article 170 specifies: “The economic order, founded on the appreciation of human work and on free enterprise, is intended to ensure everyone a life with dignity, according to the dictates of social justice.” Article 230 provides: “The family, society, and the State have the duty to assist the elderly, ensuring their participation in the community, defending their dignity and well being, and guaranteeing their right to life.” Article 6 of the Bulgarian Constitution provides: “All persons are born free and equal in dignity and rights. Section 1 of the Finnish Constitution provides: “Finland is a sovereign Republic, the constitution of which shall guarantee the inviolability of human dignity”. Article 1 of the Peruvian Constitution of 1993 reads: "The protection of the *human person* and respect for his *dignity* are the supreme goal of society and the State". Oddly, the only provision of the Chinese Constitution referring to “personal dignity” (Article 38), lists violations to personal dignity merely as: “Insult, libel, false charge, or frame-up directed against citizens by any means”. No mention is made there of socio-economic links to human dignity.

“Human dignity” is often used in reference to the right to be treated with respect. The U.S. Supreme Court has recognized that the concept of human dignity is also at the core of prohibition of “cruel and unusual punishment” by the Eighth and Fourteenth Amendments[31]. In *Weiler v. Purkett*, the United States Court of Appeals for the Eighth Circuit stated, citing *Weimer v. Amen*[32]:

[T]he state violates substantive due process when it engages in conduct that is so outrageous that it shocks the conscience or otherwise offends "judicial notions of fairness, [or is] offensive to *human dignity*"[33] (emphasis added)

Numerous UN declarations and resolutions have affirmed that “the realization of [...] economic, social and cultural rights” is indispensable to “human dignity”[34]. The concept of “human dignity” is also cited by numerous governments in their initial or periodic reports to the Committee on Economic, Social and Cultural Rights, including in relation to socio-economic rights, as well by the Committee in some of its Concluding observations[35].

The Helsinki Final Act[36] places human dignity at the source of all other human rights and fundamental freedoms:

The Helsinki Final Act declares in Principle VII that all human rights and fundamental freedoms "derive from the inherent dignity of the human person"...[A]s a philosophical statement, the proposition that rights derive from the inherent dignity

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- [31] See *Gregg v. Georgia*. <http://www.burnsinstitute.org/deathpenalty/dignity.html>
- [32] *Weimer v. Amen*, 870 F.2d 1400, 1405 (8th Cir. 1989)
- [33] Case No. 96-1022, filed on 2 March 1998
- [34] The Commission on Human Rights resolution 1998/72 on the Right to Development (UN Doc. E/CN.4/RES/1998/72) of 22 April 1998 “[r]eiterates that: (a) The essence of the right to development is the principle that the human person is the central subject of development and that the right to life includes within it existence in human dignity with the minimum necessities of life.” (para. 3). This provision is reiterated in resolution 2000/5 of the Human Rights Commission (UN Doc. E/CN.4/RES/2000/5). A link between the enjoyment of socio-economic rights and human dignity is articulated in the Commission’s resolution 2000/9 (UN Doc. E/CN.4/RES/2000/9).
- [35] In para. 142 of its initial State Party Report of 22 January 1998 the Government of Cameroon laments the difficulties of developing countries “bending under the yoke of external debt... find themselves confronted with realities that can be overcome only through sacrifices incompatible with the will of the State to attain a standard of living enabling *human dignity* to be respected”. In its 3d periodic report of 25 September 1996, Germany notes that “all State organs at all levels, i.e. Federal Government, Länder and municipalities, are constitutionally obliged to respect the *dignity of man* (art. 1, para. 1 of the Basic Law)”. Ireland’s initial report of 26 September 1997 mentions the education of prison officers, made aware “that deprivation of liberty is one of the most sensitive and far-reaching powers available to public authorities and that it should at all times be subject to the rule of law and exercised with respect for the *dignity* and basic rights to which everyone is entitled as a *human being*.” It also cites the case of *Quinn's Supermarket v. Attorney-General* (1972) I.R. 1, in which Ireland’s Supreme Court described Ireland’s prohibiting discrimination as a “guarantee of equality as human persons and ... a guarantee related to their *dignity as human beings*...”; The third periodic report by Poland of 7 January 1997 links human dignity to social rights: “In accordance with the above-mentioned Social Welfare Act, social assistance is intended to satisfy the basic needs of individuals and families and enable them to live in conditions of human dignity.” (para. 263). In its Concluding observations (20 May 1997) on the Report submitted by the Russian Federation, the Committee on Economic, Social and Cultural Rights “recommends that assistance to those who live in poverty be increased, and that adequate financial resources be made available to them so that they can live in *dignity*.” (para. 36) (all emphases added)
- [36] Conference for Security and Co-operation in Europe, 1 August 1975, Final Act, <http://www.osce.org/docs/english/1990-1999/summits/helfa75e.htm>

of the person is significant. It clearly implies that rights are not derived from the state or any other external authority[37].

In her report *Human Rights and Extreme Poverty*[38], the independent expert commissioned by the Human Right Commission, Ms. A. M. Lizin, notes:

Extreme poverty is...a violation of all human rights, striking as it does at the two main human rights principles: The equal dignity of all human beings and the principle of non-discrimination [...] The socially excluded do not feel that their dignity is recognized or respected, since the most common response they receive from society is a policy of welfare rather than human rights for all.

According to Commission on Human rights, the dignity of the human person is a finality rather than merely one of the various rights to be observed as such[39]. On 27 April 1999 the Commission adopted a resolution in which it “reaffirmed that hunger constituted an outrage and a violation of human dignity...”[40]

In his report on the “right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms” to the Commission on Human Rights, the Special Rapporteur, M. Cherif Bassiouni, asserts that “harm to dignity” resulting from violations of international rights and humanitarian law is to be compensated.[41]

Human dignity and economic deprivation

While the concept of “human dignity” covers a wider scope than socio-economic and procedural rights, we posit - based on a list proposed by Schachter[42] - that persons subject to *any one of the following conditions* are effectively denied their inherent human dignity:

- (i) persons subject to a life in abject destitution;
- (ii) persons subject to humiliating or degrading conditions of existence
- (iii) persons whose exercise of basic rights is made dependent upon the benevolence of or arbitrary power by others (as distinct from obtaining their basic entitlements as of right);
- (iv) persons subject to egregious forms of discrimination; and
- (v) persons denied the capacity to assert their [legal] claims to basic rights.

The first and the fourth conditions do not need further comments since they merely reflect principles repeatedly proclaimed in UN declarations and resolutions. The second condition is derived from the peremptory prohibition of inflicting degrading and

[37] Schachter *supra* note 28, p. 853

[38] UN Document E/CN.4/1999/48, p. 31, para. 115-117

[39] The Resolution by the Human Rights Commission adopted without a vote on 17 April 2000 “reaffirms...that all persons in all countries are entitled to the realization of their economic, social and cultural rights, which are indispensable to their dignity and the free development of their personality.” (“Resolution on the Question of the realization in all countries of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of special problems which the developing countries face in their efforts to achieve these human rights”, UN Document E/CN.4/RES/2000/9)

[40] UN Doc. E/CN.4/1999/L.21

[41] UN Doc. E/CN.4/2000/62 of 18 January 2000, para. 23

[42] Schachter, *supra* note 28

humiliating treatment but overlaps the first criteria. The third condition is based on the essential link between human dignity and freedom from servitude and slavery. The fifth condition, proposed originally by Schachter, rests on the premise that a person lacking means to assert his or her rights, is effectively lacking the means to challenge rights' violators. Such a situation of vulnerability resembles that referred to by the third condition.

If the above criteria are accepted, it follows that residents of territories subjected to economic oppression, including economic sanctions, are effectively denied their inherent human dignity, even if their material well-being is not being affected, because their exercise of basic rights is made dependent upon the benevolence of arbitrary power by others (the sanctioning parties) and because they are denied the capacity to have their rights judicially determined.

Roger Normand succinctly links human dignity to the mechanism of economic sanctions:

The fundamental premise of the entire human rights regime [...] is the need to respect the inherent dignity of every individual. These rights are owed directly to the individuals and are not forfeited because of a government's misconduct, particularly when citizens have no voice in the decisions of such governments.[43]

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[43] Roger Normand, *Iraqi Sanctions, Human Rights and Humanitarian Law*, 2 June 1997, Available from <http://www.merip.org>