

THE LEGALITY OF COMPREHENSIVE ECONOMIC SANCTIONS IN THE VIEW OF INTERNATIONAL HUMAN RIGHTS LAW

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ABBREVIATIONS

Article	Art.
European Convention on Human Rights	ECHR
European Court of Justice	ECJ
European Union	EU
International Committee of the Red Cross	ICRC
International Court of Justice	ICJ
International Covenant on Civil and Political Rights	ICCPR
International Covenant on Social and Economic Rights	ICESR
International Criminal Tribunal for the former Yugoslavia	ICTY
International Organization	IO
Security Council	SC
Security Council Resolution	S/RES
Secretary General	SG
Treaty on the European Union	TEU
United Nations	UN
United Nations Charter	UNC
United Nations Children's Emergency Fund	UNICEF
United Nations Committee on Social and Economic Rights	UNCESCR
United Nations Convention on the Rights of the Child	UNCRC
United Nations Human Rights Committee	UNHRC
United Nations Secretary General	UNSG
United Nations Security Council	UNSC
Universal Declaration of Human Rights	UDHR
Vienna Convention on the Law of Treaties	VCLT
World Health Organization	WHO

I. INTRODUCTION

When the ideological competition between the two superpowers ended in 1989, the decades of stagnation of international cooperation terminated with it. The newly found consensus meant a proliferation of multilateral efforts to respond to matters of international peace and security. Since then, the use of economic sanctions as a coercive measure to ensure compliance with the demands of the United Nations has become a frequent aspect of international interaction. Yet, the use of comprehensive economic sanctions has had controversial implications for the human rights of the civilian population of the respective state, leading to doubts about their legitimacy. Given these consequences, the question arose, of whether the Security Council is subject to any substantive limits when exercising its function to maintain international peace and security, and if so, whether there are any procedural means to address these limits. This became especially problematic in the case of the UN sanctions against Iraq and partly also Yugoslavia concerning fundamental human rights such as the right to life, the right to an adequate standard of living, and the right to health. The intention of the present paper is to deal with these underlying legal difficulties in determining the legality of comprehensive economic sanctions in the view of international human rights law.

II. LEGAL BASIS OF UNITED NATIONS ECONOMIC SANCTIONS

A. PRELIMINARY CONSIDERATIONS

Sanctions may be defined as coercive international or national foreign policy measures, directed against a state, non-state entities, or individuals, for the sake of influencing the targets behavior.¹ They can be economic sanctions (trade sanctions and financial sanctions)², travel sanctions³, military sanctions⁴, diplomatic sanctions⁵, and cultural sanctions⁶ in nature.⁷ They can be categorized into comprehensive or targeted sanctions as well as unilateral and multilateral sanctions.

Comprehensive sanctions are, broad-based restrictions directed against an entire state. The notion behind their imposition is known as ‘sanctions theory’. This theory assumes, that ‘pressure on civilians will translate into pressure on the Government for change’.⁸ The SC imposed such comprehensive sanctions against eg Southern Rhodesia (1965-1979), South Africa (1977-1994), Iraq (1990-2003), Yugoslavia (1991-1996), and Haiti (1993-1994). Comprehensive sanctions are criticized for their negative impact on the rights of uninvolved civilians, as will be outlined furthermore below.

Targeted or ‘smart’ sanctions are selective measures directed against specific individuals or private entities. The SC imposed targeted sanctions against eg the directors of the National Union for the Total Independence of Angola (UNITA) (1993-2002), the supporters of the military junta in Sierra Leone (1997-2006), the Taliban regime (1999-2016) and the Al-Qaida network (1999-today).

¹ The term ‘sanction’ is not explicitly mentioned in the UNC

² Trade sanctions forbid the export to or import from a country. Financial sanctions may consist of the freezing of funds and assets.

³ Travel bans and embargoes on different means of transport against individuals or groups fall under travel sanctions.

⁴ Military sanctions might include arms embargoes and the cancellation of military services.

⁵ Diplomatic sanctions, targeted sanctions against the leaders, include non-recognition of the respective action, refusals of contact or unwillingness to cooperate, and the breakup of diplomatic relations.

⁶ Fe if the country is banned from different cultural activities.

⁷ Sub-Commission on the Promotion and Protection of Human Rights, The Adverse Consequences of Economic Sanctions on the Enjoyment of Human Rights (21 June 2000) UN Doc. E/CN.4/Sub.2/2000/33 paras 14-17 (Working paper)

⁸ It is however noted, that this theory seems to only apply to democratic nations, where the civilians actually have a chance to influence their leaders; Ibid. paras 48, 49

Unilateral sanctions are sanctions imposed by single states, whereas multilateral sanctions are initiated by multiple states through an international organization, such as the UN. The legal basis of UN sanctions is within the United Nations Collective Security System in Chapter VII of the UN Charter.

B. THE UNITED NATIONS COLLECTIVE SECURITY SYSTEM

The United Nations Collective Security System is the primary mechanism to achieve the fundamental and often stated purpose of the United Nations to 'save succeeding generations from the scourge of war' and to 'maintain international peace and security'.⁹ The Security Council's authority to impose sanctions is derived from Art. 39 and Art. 41 UN Charter. According to Art. 39:

'The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security'.¹⁰

Since there is no definition in the UN Charter, it remains within the political discretion of the SC to determine what constitutes a threat to international peace and security. The decision-making process of the SC requires at least nine affirmative votes, including those of the five permanent members (United States, Russian Federation, United Kingdom, France, and the Republic of China), which have a right to veto the decision. Having the primary responsibility to fulfill the goal of maintaining international peace and security, as is reflected in Art. 24, the SC has the ability to adopt legally binding resolutions. The actions of the SC can be provisional measures pursuant to Art. 40 UN Charter, non-military measures according to Art. 41, or military action under Art. 42. Providing that the threshold of Article 39 is met, the non-military measures allow the Council to call upon the member states to implement sanctions:

'The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.'¹¹

⁹ Preamble, UNC (adopted at San Francisco 26 June 1945, entered into force 24 October 1945)

¹⁰ Art. 39 UNC

¹¹ Art. 41 UNC; The general legality of the establishment of a sanctions system by the SC can in theory be questioned, this debate is, however, overridden by political reality and the broad discretion of the SC in Art. 39.

The implementation of decisions of the SC is mandatory for the member states, as is set forth by Art. 25.¹² The SC has made use of its power to impose sanctions on several occasions after the end of the cold war, which is why this time is also referred to as the ‘sanctions decade’. This development was initially welcomed after the decades-long deadlock of the SC during the cold war. This, however, retaliated, when the concern about the humanitarian consequences of comprehensive economic sanctions, as discussed below, became apparent. This prompted the question, of whether there are any substantive limits to the powers of the SC, and if so, whether there are any procedural means to address these limits.¹³

III. SECURITY COUNCIL AND HUMAN RIGHTS

A. SUBSTANTIVE LAW: HUMAN RIGHTS CONSTRAINTS OF THE SECURITY COUNCIL

The SC enjoys the above-mentioned political discretion to determine a situation as ‘threatening international peace and security’ in the sense of Art. 39. Questionable is, whether the SC is limited in its subsequent decision on what measures to take as a response. It seems self-evident to assume, that the SC, as a body of the UN, is obligated to adhere to human rights. The existence of such an obligation and its legal basis however, is highly controversial. In a reference to Art. 38 ICJ-Statute, human rights limitations of the SC can possibly be derived from the UN Charter, customary international law, general principles of international law, and human rights treaty law.¹⁴

1. BY THE UNITED NATIONS CHARTER

Any IO is bound by the rights and duties set out in its own constituent document. Hence, the UN, and therefore the SC, is in any case bound by the UN Charter. The SC was established as a political body. The text of the Charter views the SC as enjoying a seemingly unfettered power regarding its

¹² Art. 25 UNC: ‘The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.’

¹³ Jeremy M. Farrall, *United Nations Sanctions and the Rule of Law* (56 Cambridge University Press 2009) 73.

¹⁴ Art. 38, ICJ-Statute (adopted at San Francisco 26 June 1945, entered into force in 24 October 1945): ‘The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b. international custom, as evidence of a general practice accepted as law; c. the general principles of law recognized by civilized nations; d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law. (...)’

Chapter VII decisions, leading some to conclude, that it should not be impeded by human rights considerations.¹⁵ International Courts (ICJ¹⁶ and ICTY¹⁷), however, conceive the SC not as *legibus solutos*.¹⁸ Further, it has been stated, that this lack of precise provisions is a general characteristic of law and the wording may justify a certain discretion, but does not equal an unlimited one.¹⁹ Even if this would have been the intention, this view would be outdated.²⁰ Moreover, there is the claim, that this lack of precise provisions can be explained by the fact, that the drafters of the Charter likely did not take into account, that the UN itself could violate human rights.²¹ This, however, does not justify that, *argumentum e contrario*, human rights violations of the SC shall therefore be viewed as lawful.²² In line with this argument is also the belief that the Charter has to be interpreted in a dynamic way, now including human rights limitations in the practice of the SC.²³

¹⁵ Hans Kelsen, *The Law of the United Nations: A Critical Analysis of its Fundamental Problems* (Frederick A. Praeger 1951) 735; Garbiel H. Oosthuizen, *Playing the Devil's Advocate: The United Nations Security Council Is Unbound by Law* (1999) 12 *Leiden Journal of International Law* 549 (<<https://www-cambridge-org.uaccess.univie.ac.at/core/services/aop-cambridge-core/content/view/1997FAD39397FAC19DDDE55727C6ECE0/S0922156599000278a.pdf/playing-the-devils-advocate-the-united-nations-security-council-is-unbound-by-law.pdf>>) accessed 29 January 2023

¹⁶ See *Conditions of Admission of a State to Membership in the United Nations*, Advisory Opinion, ICJ Reports 1948, 64 (<<https://www.icj-cij.org/public/files/case-related/3/003-19480528-ADV-01-00-EN.pdf>>) accessed 23 January 2023

¹⁷ *Prosecutor v Dusko Tadic a/k/a "Dule"*, Judgement under Appeal (1995) ILM 35 35, 42, para 28 (<<https://www.icty.org/x/cases/tadic/acdec/en/51002.htm>>) accessed 31 January 2023

¹⁸ meaning 'unbound by law'; Clemens A. Feinäugle, *Hoheitsgewalt im Völkerrecht: Das 1267-Sanktionsregime der UN und seine rechtliche Fassung* (Springer Berlin 2011) 78f

¹⁹ Martin Lailach, *Die Wahrung des Weltfriedens und der Internationalen Sicherheit als Aufgabe des Sicherheitsrates der Vereinten Nationen* (Duncker & Humblot 1998) 163;

²⁰ Erika de Wet, *The Chapter VII Powers of the United Nations Security Council* (Hart Publishing 2004) 136. (with further footnotes)

²¹ Bardo Fassbender, *Sources of Human Rights Obligations Binding the UN Security Council* (2010) in *Making Transnational Law Work in the Global Economy* 71-92, Cambridge University Press 72. (<https://www-cambridge-org.uaccess.univie.ac.at/core/services/aop-cambridge-core/content/view/B4E8550FD3C4A11754DC7CD1910A3FD4/9780511675881c6_p71-92_CBO.pdf/sources-of-human-rights-obligations-binding-the-un-security-council.pdf>) accessed 29 January 2023

²² August Reinisch, *Developing Human Rights and Humanitarian Law Accountability of the Security Council for the Imposition of Economic Sanctions* (2001) 95 *American Journal of International Law* 851, 857. (<<https://www.cambridge.org/core/journals/american-journal-of-international-law/article/abs/developing-human-rights-and-humanitarian-law-accountability-of-the-security-council-for-the-imposition-of-economic-sanctions/E562029C582A70EA7E7A78BC226FBDDD>>) accessed 29 January 2023

²³ Vera Gowlland-Debbas, Mariano G. Rubio, Hassiba Hadj-Sahraoui, *United Nations Sanctions and International Law* (2002) BRILL, 15 (<<https://brill-com.uaccess.univie.ac.at/edcollbook/title/10819>>) accessed 29 January 2023; Eugenia López-Jacoiste, *The UN Collective Security System and its Relationship with Economic Sanctions and Human Rights* (2010) 14 *Max Planck Yearbook of United Nations Law* 273, 297 (<<https://doi.org/10.1163/18757413-90000054>>) accessed 29 January 2023; Fassbender, *Sources of Human Rights Obligations Binding the UN Security Council* (n23) 86.

Limits to the powers of the SC may also be derived from the **preamble of the UN Charter**. Apart from the above-mentioned maintenance of international peace and security, it states, that the UN is determined to ‘*reaffirm faith in fundamental human rights*’ and to ‘*establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained*’ and ‘*to promote social progress and better standards of life in larger freedom*’.²⁴ It can therefore be said, that these values would be undermined if the SC were to violate human rights.²⁵

Alternatively, the **purposes of the UN** might also support legal limits of the SC. Art. 24 states, that the SC shall act ‘*in accordance with the purposes and principles of the United Nations*’.²⁶ Art. 1 then provides:

’The Purposes of the United Nations are: 1. To maintain international peace and security (...) 3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion (...).’²⁷

Since it is one of the main purposes of the UN to promote human rights, it is argued that the SC is bound to them.²⁸ The **principles of the UN** in Art. 2 might also support human rights constraints of the SC. Art. 2 states:

‘The Organization and its Members, in pursuit of the Purposes stated in Art. 1, shall act in accordance with the following Principles: (...) All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.’²⁹

²⁴ Preamble UNC

²⁵ Reinisch (n24) 857; Guglielmo Verdirame, *The UN and Human Rights: Who Guards the Guardians?* (2011) Cambridge University Press 57.

²⁶ Art. 24 UNC

²⁷ Art. 1 UNC

²⁸ Anna Segall, *Economic Sanctions: Legal and Policy Constraints* (1999) 81 *International Review of the Red Cross* 763, 765 ff. (<<https://doi.org/10.1017/S1560775500103700>>) accessed 29 January 2023; Peggy Kozal, *Is the Continued Use of Sanctions as Implemented Against Iraq a Violation of International Human Rights?* (2000) 28 (4) *Denver Journal of International Law and Policy* 883, 392; Roger Normand, Christoph Willeke, *Human Rights, Sanctions, and Terrorist Threats: the United Nations Sanctions against Iraq* (2001) 11 (2) *Transnational Law & Contemporary Problems* 299, 340; de Wet (n22) at 221; Fassbender, *Sources of Human Rights Obligations Binding the UN Security Council* (n23) at 82.

²⁹ Art. 2 UNC

This principle of good faith has led authors to argue, that the SC is bound to human rights through the estoppel-principle. In its usual sense, this principle protects the legitimate expectations of a state resulting from an unequivocal behavior of another state, if the latter state has secured a benefit from acting contrary to the others' expectation or a damage of the relying state has occurred. Transferring this idea to the UN, it is stated, that through its extensive and active contribution to international human rights law, the UN has raised the expectation, that it would abide human rights law.³⁰ Against this argument can be put forward however, that it is doubtful, whether the SC actually raised a legitimate expectation on which the member states relied on. Equally questionable could be the fulfillment of the other prerequisites for the application of the principle (damage of the member states and/or benefit or advantage of the UN resulting from the violation of human rights) and overall, if it, therefore, is even applicable to the SC.³¹

Another argument favoring a human rights limitation refers to the **implied-powers doctrine**, which the court expressed as the following: *'Under international law, the Organization must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties.'*³² In concreto, *'the rights and duties of an entity such as the [United Nations] Organization must depend upon its purposes and functions as specified or implied in its constituent documents and developed in practice.'*³³ The notion of implied rights and duties has led some to conclude, that *'if the practice of an organization develops in such a way that it includes an exercise of direct authority over individuals, a corresponding duty of that organization to observe human rights arises under international law'*.³⁴

³⁰ de Wet (n22) 195; Fassbender, *Sources of Human Rights Obligations Binding the UN Security Council* (n23) 82 ff.; Feinäugle (n20) 86 ff.

³¹ Fassbender, *Sources of Human Rights Obligations Binding the UN Security Council* (n23) 87; Feinäugle (n20) 86 ff.

³² *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, ICJ Reports 1949, 182, 183 (<<https://www.icj-cij.org/public/files/case-related/4/004-19490411-ADV-01-00-EN.pdf>>) accessed 23 January 2023 (Reparation Case)

³³ Ibid. 180.

³⁴ Fassbender, *Sources of Human Rights Obligations Binding the UN Security Council* (n23) 84; see also Verdirame (n25) 75. (for a discussion on implied obligations)

2. BY GENERAL INTERNATIONAL LAW

Human rights constraints of the SC can arguably also be derived from general international law (customary law and the general principles of international law) since some human rights provisions are considered to be part of general international law.

On the one hand, some authors justify their view that the SC is unbound by general international law by stating that there is - again - no explicit provision in the Charter that suggests otherwise. The provision in Art. 1, stating that the SC should 'act in conformity with the principles of justice and international law', solely deals with the SC's dispute settlement function.³⁵ On the other hand, there is the claim that IO are bound to general international law due to their legal personality.³⁶ This is especially pertinent to those rules, that are central to the activities of the IO. If the IO therefore engages in conduct that is likely to affect human rights, it should be bound to those human rights that are considered to be part of general international law. Overall, it should not be possible for the member states to circumvent the observance of general international law by creating an IO.³⁷

Concerning the **general principles of international law**, certain human rights standards might be considered as being part of it.³⁸ In the law of the EU eg, human rights provisions in the ECHR are to be respected by the EU as general principles of Union law.³⁹ Some authors view the provisions therefore as binding for the EU. Because certain human rights standards are included in the national laws of a representative number of states internationally, it has been argued, that they have become general principles of international law, which are applicable to IOs, and therefore the UN and the SC, when they exercise governmental authority over individuals comparable to the EU.⁴⁰

³⁵Art. 1 UNC; Reinisch (n24) 856 f.; Feinäugle (n20) 84 f.; Bruno Simma and others, *The Charter of the United Nations: a commentary.. Volume II* (3rd edn, Oxford University Press 2012) para 40.

³⁶ The legal personality of the UN was confirmed by the ICJ in the Reparation Case (n33) 174.

³⁷ Fassbender, *Sources of Human Rights Obligations Binding the UN Security Council* (n23) 90; López-Jacoiste (n23) 293 f.; Verdirame (n25) 71.

³⁸ Nicholas Tsagourias, Nigel D. White, *Collective Security: Theory, Law and Practice* (Cambridge University Press 2013) 317 ff.

³⁹ Art. 6 (3), TEU (7 February 1992, as amended by the Treaty of Lisbon on 13 December 2007): 'Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.'

⁴⁰ Fassbender, *Sources of Human Rights Obligations Binding the UN Security Council* (n23) 77 ff.

Concerning **customary international law**, fundamental provisions in the UDHR, such as the right to life and the prohibition of genocide, are largely seen as being part of customary international law.⁴¹ The UDHR was integrated into two multilateral treaties, the ICCPR and the ICESCR. The rules of the UNCRC are also seen as being reflective of customary international law.⁴² The same accounts for rules of humanitarian law incorporated into the Geneva Conventions, to which, additionally, the UN declared itself to respect those rules.⁴³ The principle of proportionality is even considered by some authors to be part of *ius cogens*.⁴⁴

The question, of whether or not the SC is limited by human rights through general international law corresponds with the question, of whether it is bound to **ius cogens** norms, since they can be classified as a sub-category of customary international law.⁴⁵ *Ius cogens* is defined in the VCLT as 'a norm of general international law accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.'⁴⁶ It is largely accepted, that IOs, and therefore the UN and the SC, are bound by peremptory norms.⁴⁷ There is no consensus, on which specific norms constitute *ius cogens*, but some authors view fundamental

⁴¹ *ibid* 79.

⁴² Kozal (n30) 396.

⁴³ *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua. v. United States), Judgement, ICJ Reports 1986, 113-14 (<<https://www.icj-cij.org/public/files/case-related/70/070-19841126-JUD-01-00-EN.pdf>>) accessed 24 January 2023; UNSG Bulletin, Observance by United Nations forces of international humanitarian law (1999) UN Doc. ST/SGB/1999/13 (<<https://www.refworld.org/docid/451bb5724.html>>) accessed 24 January 2023; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, Preliminary Objections, Judgment, ICJ Reports 1996, para 78-79 (<<https://www.icj-cij.org/public/files/case-related/91/091-19960711-JUD-01-00-EN.pdf>>) accessed 24 January 2023; Tsagourias and White (n40) 316; Kozal (n30) 394; Reinisch (n24) 855; Provost, *Starvation as a Weapon: Legal Implications of the United Nations Food Blockade against Iraq and Kuwait* (1992) 30(3) *The Columbia Journal of Transnational Law* 577, 591.

⁴⁴ see de Wet (n22) 221 (with further footnotes); López-Jacoiste (n23) 295.

⁴⁵ Fassbender, *Sources of Human Rights Obligations Binding the UN Security Council* (n23) 80.

⁴⁶ Art. 53, VCLT (adopted at Vienna 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331

⁴⁷ Susan Lamb, *Legal limits to the United Nations Security Council Powers* (Oxford University Press 1999) 372; Reinisch (n24) 859; López-Jacoiste (n23) 291; Feinäugle (n20) 97; Tsagourias and White (n40) 317 (differentiating between internally and externally binding *ius cogens* norms)

human rights, such as the right to life and the prohibition of genocide and torture as being part of it.⁴⁸

3. BY HUMAN RIGHTS TREATY LAW

The United Nations is not, and could not be, a member of the international human rights conventions, since it is an IO and not a state.⁴⁹ In principle, because IOs are legal subjects distinct from the member states, their obligations do not automatically translate into the obligations of the organization. Therefore, the respective provisions are not directly binding upon the SC. There are, however, different approaches that explain the binding nature of specific provisions in international human rights treaties indirectly through the other above-mentioned sources, as will be shown in Chapter five concerning the right to life, the right to an adequate standard of living, and the right to health.

B. PROCEDURAL LAW: ACCOUNTABILITY OF THE SECURITY COUNCIL

Potential human rights constraints of the SC trigger the question, of whether there is any forum that can determine a potential human rights violation, hold the SC accountable and provide a remedy for victims. The ICJ, national courts, or international or regional human rights bodies might serve as competent authorities.

The **ICJ**, as the judicial organ of the UN, is the first one coming to mind concerning the determination of possible human rights violations. There is, however, neither a provision in the UN Charter nor in the ICJ-Statute, that the ICJ has the power to review the decisions of the SC. According to the ICJ-Statute, the court can only decide upon disputes between states, the SC can therefore not be bound by such a decision.⁵⁰ Other than that, there is the possibility of non-binding

⁴⁸ de Wet (n22) 229; López-Jacoiste (n23) 290, 296; Farrall (n15) 71; for a detailed analysis, see Bertrand G. Ramcharan, Martinus Nijhoff, *The Right to Life in International Law* (Hague Academy of International Law, Center for Studies and Research 1985) 14, and Stuart Casey-Maslen, Christof Heyns, *The Right to Life under International Law: an Interpretative Manual* (Cambridge University Press 2021) 17.

⁴⁹ As for now, membership to the conventions is only available for states, see fe Art 48, ICCPR (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171

⁵⁰ Competence of the Court in Art. 34 ICJ-Statute: 'Only states may be parties in cases before the Court. (...)'

advisory opinions of the ICJ.⁵¹ These two mechanisms however are only available for states or certain UN organs. Within contentious cases or through advisory opinions, the ICJ can only indirectly review acts of the SC and has already done so.⁵² The possibility of direct review by the ICJ however, is worth considering. Direct review could pressure the SC to reflect on the impact of its actions more extensively and thus strengthen the rule of law. Contrastingly, it would likely undermine the legitimacy of the act of the SC, which in turn would probably result in a lack of (often necessarily urgent) compliance by the member states. This could threaten the functioning of the collective security system.⁵³

Regional and national courts might also be considered since individuals might try to sue the IO directly. IOs, however, enjoy immunity. Concerning the UN itself, Art. 105 UN Charter states '*The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes.*' This immunity is also regulated in most national legislations. Therefore, individuals generally will not, and have not,⁵⁴ succeed(ed) in filing a lawsuit against the UN due to human rights violations.

Individuals have also tried to bring in claims against states due to human rights violations since actions are mostly - although imposed by the UN - implemented by states. In these cases, courts have also been confronted with the question of the reviewability of the decisions of the SC.

⁵¹ Art. 65 ICJ-Statute: '1. The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request. (...); Art. 96, paragraph 1 and 2 UN Charter "[t]he General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question". "[o]ther organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities".'

⁵² See eg *Case Concerning Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie* (Libyan Arab Jamahiriya v. United States of America), Judgement, ICJ. Reports 1992 (<https://www.law.ox.ac.uk/sites/default/files/migrated/oscola_4th_edn_hart_2012.pdf>) accessed 23 January 2023 and *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, Preliminary Objections Bosnia and Herzegovina v. Yugoslavia, Judgment, ICJ. Reports 1996 (<<https://www.icj-cij.org/public/files/case-related/91/091-19960711-JUD-01-00-EN.pdf>>) accessed 23 January 2023

⁵³ de Wet (n22) 58; Farrall (n15) 345-351.

⁵⁴ See eg *Foundation Mothers of Srebrenica v. The Netherlands and the UN*, Case No. 295247/HA ZA 07-2973, Judgement in the incidental proceedings of 10 July 2008

A. SANCTIONS AGAINST IRAQ (1990-2003)

The SC imposed comprehensive economic sanctions against Iraq in response to its invasion of Kuwait in 1990. Initially, the purpose of the sanctions was to restore Kuwait's sovereignty. The first sanctions prohibited the imports from, and exports to Iraq, the sale of weapons and other military equipment, as well as the availability of financial resources.⁵⁹ The SC established also a Sanctions Committee consisting of the members of the SC and tasked to monitor the implementation of the sanctions. The member states were allowed to use force to implement the decision of the SC. The sanctions included humanitarian exemptions concerning medical supplies and in - unspecified - 'humanitarian circumstances', foodstuffs. Although there were disagreements within the SC, shipments of food were not allowed. Cuba openly opposed the imposition of the food blockade noting that *'the access to basic foodstuffs and to adequate medical assistance is a fundamental human right to be protected under all circumstances.'*⁶⁰ This opposition was outvoted in the SC and - in response to Iraq's ongoing non-compliance with international law - even further sanctions were imposed, expanding the range of the sanctions to all kinds of transport, including air transport.⁶¹ In reaction to reports on food shortages, the food blockade was lifted when the Gulf War ended. But the remaining sanctions continued due to Iraq's threat to use weapons of mass destruction. Even though the sanctions had a severe and seemingly undisputed impact on the life, livelihood, health, and living conditions of Iraq's civilians, the US and the UK blocked the lifting of the sanctions until 2003.⁶²

B. SANCTIONS AGAINST YUGOSLAVIA (1991-1996)

In 1991, the SC imposed a general and complete arms embargo against the whole territory of former Yugoslavia, although it was arguably an internal conflict.⁶³ The sanctions were decided upon in response to the violation of the Igalo Ceasefire Agreement 1991 and the military atrocities

⁵⁹ UNSC Res 661 (1990) (<<https://digitallibrary.un.org/record/94221>>) accessed 24 January 2023

⁶⁰ UNSC Res 666 (1990) (<<https://digitallibrary.un.org/record/96569>>) accessed 24 January 2023; Provost (n45) 579

⁶¹ UNSC Res 670 (1990) (<<https://digitallibrary.un.org/record/97522>>) accessed at 24 January 2023

⁶² In an attempt to mitigate the humanitarian consequences for the Iraqi population, the Oil-For-Food programme was introduced by the SC. It permitted the import of humanitarian goods, such as foodstuffs and essential medicines, in exchange for exports of Iraqi petroleum. While this might have prevented the situation from getting worse, it did not alleviate the suffering of the population.

⁶³ UNSC Res 713 (1991) (<<https://digitallibrary.un.org/record/126827>>) accessed at 24 January 2023

between Serbia, Croatia, and Bosnia which caused a substantial loss of human life and material damage.⁶⁴ The Resolutions condemned systematic human rights and humanitarian law violations, including of ‘ethnic cleansing’. The SC highlighted the urgent need of humanitarian assistance for the thousands of refugees and displaced persons.⁶⁵ In 1992 the SC decided to impose a complete economic embargo against Yugoslavia, but excluded foodstuffs and medical supplies.⁶⁶ Moreover, air travel, financial transactions, and cultural and scientific exchanges were banned. Following various extensions,⁶⁷ the sanctions were lifted after the Dayton Agreement was signed.⁶⁸

V. IMPLICATIONS OF COMPREHENSIVE ECONOMIC SANCTIONS FOR THE HUMAN RIGHTS OF INDIVIDUALS

In several Resolutions in which the SC imposed sanctions, including the case of Iraq and Yugoslavia, certain human rights violations were reasons to trigger actions of the SC.⁶⁹ For this reason, it seems paradox, that the subsequent implementation of sanctions can be criticized, in itself, to violate human rights. Human rights that are most likely affected by comprehensive economic sanctions are the right to life, the right to an adequate standard of living, and the right to health.

A. SANCTIONS AND THE RIGHT TO LIFE

Sources, content and scope of the right to life

The right to life is the most fundamental human right, since it is the prerequisite for the enjoyment of every other human right.⁷⁰ It is largely seen as being a part of customary international law and

⁶⁴ Ibid.

⁶⁵ UNSC Res 757 (1992) (<<https://digitallibrary.un.org/record/142881>>) accessed at 24 January 2023

⁶⁶ Ibid.

⁶⁷ UNSC Res 787 (1992) (<<https://digitallibrary.un.org/record/153793>>) accessed 24 January 2023; UNSC Res 820 (1993) (<<https://digitallibrary.un.org/record/165323>>) accessed 24 January 2023

⁶⁸ UNSC Res 1022 (1995) (<<https://digitallibrary.un.org/record/190970>>) accessed 24 January 2023; Popovski, *The UN Security Council Approach to the Conflicts in Former Yugoslavia* (2002) 2(3) *Journal of Southeast European and Black Sea Studies*, 39–62, 39.

⁶⁹ Eg concerning Iraq: the resolutions condemned Iraq’s acts of violence, the holding of third-State nationals against their will, the treatment of Kuwait nationals by Iraq’s forces, including forcing them to leave their own country, and the seizure of property in Kuwait. Concerning Yugoslavia: The resolutions condemned massive and systematic violations of human rights as well as serious violations of humanitarian law, including ‘ethnic cleansing’.

⁷⁰ UNHRC, *General Comment No 36, Article 6 (right to life)* (3 September 2019) UN Doc CCPR/C/GC/36, para 2 (<<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/261/15/PDF/G1926115.pdf?OpenElement>>) accessed at 24 January 2023

the general principles of international law.⁷¹ Some authors also view the right to life as being part of *ius cogens*.⁷² It is also recognized in several international human rights conventions, which give further insight into its content. The ICCPR eg states, that ‘*Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*’⁷³ The scope of the right to life is controversial. A restrictive approach that is based on the wording of the provisions, interprets the right to life as solely protecting against arbitrary deprivation of life by way of torture, disappearance, and execution.⁷⁴ Other authors take a more contemporary and broad approach and include the protection of the right to life by way of starvation or the absence of providing basic needs, such as foodstuffs, medical facilities, and healthcare.⁷⁵ Equally, the Human Rights Committee stated in its General Comment ‘the right to life has been too often narrowly interpreted. The expression “inherent right to life” cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures. (...)’⁷⁶ The UNCRC also guarantees the right to life and obligates the member states to ‘*ensure to the maximum extent possible the survival and development of the child*’. It requires the states to ‘*take measures to diminish infant and child mortality, to ensure medical assistance and healthcare to all children and to combat disease and malnutrition through, inter alia, (...) the provision of adequate nutritious foods and clean drinking-water*’.⁷⁷

The impact of the wars in Iraq already caused devastating civil hardship, but the sanctions have severely aggravated the situation for the civil population. The thirteen years of sanctions in Iraq

⁷¹ Art. 3, UDHR (adopted 10 December 1948 UNGA Res 217 A(III) guarantees a right to life; Reinisch (n24) 862; Tomuschat, *Human Rights: Between Idealism and Realism* (13 (1) Oxford University Press 2008) 37; Fassbender, *Sources of Human Rights Obligations Binding the UN Security Council*, (n23) 79.

⁷² supra note 50

⁷³ Art. 6 ICCPR

⁷⁴ Yoram Dinstein, *the Right to Life, Physical Integrity and Liberty*, in L. Henkin (ed.) (The International Bill of Rights, Columbia University Press, New York, 1981) 115.

⁷⁵ Ramcharan, Nijhoff (n50) 3 ff.; Segall (n30) 771 ff.; de Wet (n22) 220;

⁷⁶ UNHRC, *General Comment No. 6, Article 6 (right to life)* (30 April 1982) U.N. Doc. HRI/GEN/1/Rev.1, para 5 (<<https://www.refworld.org/docid/45388400a.html>>) accessed 24 January 2023; See also General Comment 36 (n72) para 3: ‘The right to life is a right that should not be interpreted narrowly. It concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity.’

⁷⁷ Art. 6, UNCRC (adopted 20 November 1989 at New York City, entered into force at 2 September 1990) 1577 UNTS

have, as shown by several studies *from the UN itself*, despite the inclusion of humanitarian exemptions, contributed to hundreds of thousands of deaths.⁷⁸ Some authors even considered the possibility, that the sanctions against Iraq were a form of genocide.⁷⁹ The sanctions especially affected the most vulnerable in society, such as women, children, infants, poor and sick people.⁸⁰ The precise number of deaths is contentious, but the approximations range from half a million to one and a half million.⁸¹ Accordingly, several UN officials who monitored the sanctions on Iraq resigned in protest of the humanitarian consequences of the sanctions.⁸² The deaths are believed to be attributable to food shortages and high rates of diseases combined with a poor healthcare system, as will be shown below. Who to blame for the humanitarian consequences in Iraq, is controversial. There are convincing arguments for blaming the Iraqi government since it refused to adhere to the demands of the UN and repeatedly refused to cooperate to provide humanitarian aid for the population (perhaps even on purpose to gain sympathy for their lifting). On the other side, there is the SC, and overall the UN, who made the decision to impose sanctions and repeatedly refused to lift them despite knowledge of the situation in Iraq.⁸³

⁷⁸ The former SG, several UN officials and UN agencies, several member states of the UN and several NGOs and humanitarian organizations have expressed their concern

⁷⁹ Genocide is defined in the Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948 at Paris, entered into force 12 January 1951) 78 UNTS 277, as: ‘Any 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 b) Causing serious bodily harm or mental harm to members of the group or c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part’; Davidsson E, “The Economic Sanctions against the Iraqi People: Consequences and Legal Findings” (*Elias Davidsson, The Economic Sanctions against the Iraqi People: Consequences and Legal Findings*) (<<http://www.hartford-hwp.com/archives/27c/092.html>>) accessed 23 January 2023; Simons, *Imposing Economic Sanctions: Legal Remedy or Genocidal Tool?* (Pluto Press, 1999) in Farrall (n15) 5

⁸⁰ UNICEF found, that the child mortality rate more than doubled from 1991-1999. UNICEF, press release (12 August 1999), CF/DOC/PR/1999/29 in Working paper (n7) para 64

⁸¹ Working paper (n7) para 63

⁸² Denis Halliday (Humanitarian Coordinator in Iraq): ‘*We are in the process of destroying an entire society. It is as simple and terrifying as that. It is illegal and immoral.*’ (Independent, 15 October 1998.) and his successor Hans von Sponeck stating that ‘*he could no longer be associated with a programme that prolonged the suffering of the people and which had no chance to meet even the basic needs of the civilian population.*’ (Working paper (n7) para 68); Reuters, “Top UN official leaves Iraq, says programme failed”, 17 February 2000.) and Jutta Burghardt (Head of the World Food Programme in Iraq), stating that she fully agrees with Mr. von Sponeck’s statement (Washington Post, “Aide who quit in protest plans report on airstrikes on Iraq”, 17 February 2000.); Working paper (n7) para 68; Kozal (n30) 388, 389; Verdirame (n25) 308, 309.

⁸³ Former SG Kofi Anan stated in this respect: ‘*The United Nations has always been on the side of the vulnerable and the weak, and has always sought to relieve suffering, yet here we are accused of losing the argument, on the propaganda war - if we haven’t already lost it - about who is responsible for this situation in Iraq - President Saddam Hussein or the United Nations.*’ (UNSG, speech addressing the Security Council at its 4120th Meeting to deliver his Report on the situation between Iraq and Kuwait (24 März 2000) UN Doc. S/2000/208)

In Yugoslavia, the crisis also caused severe civilian hardship and the economic sanctions likely aggravated this situation. Data shows that the mortality and malnutrition rates increased significantly during the sanctions period, especially among children and infants. Other than in the case of Iraq, however, the direct impact of the sanctions seems to be less clear, since there were other alternative or contributing factors that likely caused or aggravated the situation.⁸⁴

An obligation for the SC to concerning the right to life can arguably⁸⁵ be derived by a dynamic interpretation of the UN Charter.⁸⁶ Additionally, the right to life is broadly recognized as being part of general international law and by some even as part of *ius cogens*.⁸⁷ The content of the right to life, however, is debatable. Yet, a contemporary reading supports the view of the HRC. The right should therefore not be understood in a restrictive manner and the SC should be obligated to design its sanctions regimes in a way that does not violate the right to life of innocent individuals.⁸⁸

B. SANCTIONS AND THE RIGHT TO AN ADEQUATE STANDARD OF LIVING

Sources, content, and scope of the right to an adequate standard of living

It is controversial whether a right to an adequate *standard* of living is reflective of customary international law or the general principles of international law. Yet, the ICESR recognizes a right to an adequate standard of living, which includes adequate food, clothing, housing, and the continuous improvement of living conditions. The *right to food* in the ICESR, which is also found in the UDHR, includes the right to be free from hunger and malnutrition.⁸⁹ The General Comment, as an authoritative interpretation, sees its normative content as including the obligation of states to

⁸⁴ de Wet (n22) 240-243

⁸⁵ See III.A.1, 2, 3

⁸⁶ See esp. Art. 24, Art 1; Art. 55 UNC states, that the UN seeks '*universal respect for, and observance of, human rights and fundamental freedoms for all*'; Gowland-Debbas (n25) 15; for a different view, see Bruno Simma and others, (n37) para 40, 43 (stating that 'rather than setting precise limits, Art. 1 (3) establishes guidelines for the exercise of Chapter VII powers')

⁸⁷ The mere debate of whether or not the right to life is considered to be part of *ius cogens* underlines the utmost importance of this right and should therefore legitimately constrain the conduct of the SC.

⁸⁸ Provost (n45) 577 ff.; Segall (n30) 33 ff.; de Wet (n22) 220.

⁸⁹ Art 11, 12, ICESR (adopted 16 December 1966 at New York City, entered into force 3 January 1976) 993 UNTS 3

‘mitigate and alleviate hunger’ (even in times of natural or other disasters).⁹⁰ The core content of this right is described with, *inter alia*, the *accessibility of food*, implying that the costs of food should not threaten or compromise other basic needs. Moreover, adequate food must be available for vulnerable individuals, such as infants. Violations of the right include ‘the prevention of access to humanitarian food aid in (...) emergency situations.’⁹¹ The precise content of the obligations arising from the right to food is controversial since it is unclear whether there is a positive obligation of states to supply food to those in need.⁹²

The *standard of living* in Iraq significantly deteriorated after the hardship of the war and the sanctions. The United Nations Development Programme Field Office recognized ‘the country has experienced a shift from relative affluence to massive poverty’.⁹³ Concerning the *right to food*, the sanctions against Iraq, included a food blockade, as touched upon briefly above. Consequently, Iraq was faced with food shortages, since the nutrition of the population was largely dependent on imports from other countries (between seventy-five percent to eighty percent of the total calorie intake of the state was imported).⁹⁴ In 1991, the WHO and UNICEF documented, that this sparsity of food had severe consequences, especially for women and children.⁹⁵ In the same year, a fact-finding mission was sent by the SC to evaluate the need for urgent humanitarian assistance in Iraq. Given the ‘near apocalyptic’ situation, it recommended that the sanctions on food supplies should be immediately removed and to induce emergency shipments of basic foodstuffs.⁹⁶ Despite this, UNICEF estimated in 1994, that ‘3.5 million Iraqi civilians were at a significant health risk of malnutrition and death due to the sanctions, including 1.58 million children under the age of fifteen

⁹⁰ UNCESCR, *General Comment No. 12: The Right to Adequate Food (Art. 11)* (12 May 1999) UN Doc E/C.12/1999/5, para 6 (<<https://www.refworld.org/pdfid/4538838c11.pdf>>) accessed 24 January 2023

⁹¹ *Ibid.* para 19

⁹² Segall (n30) 773

⁹³ Working paper (n7) para 67

⁹⁴ Provost (n45) 583

⁹⁵ UNSG, *Note / by the Secretary-General, Joint WHO/UNICEF team report: a visit to Iraq Feb 16-21, 1991* (4 March 1991) U.N.Doc. S/22328, 10-12 (<<https://digitallibrary.un.org/record/109174?ln=fr>>) accessed 24 January 2023

⁹⁶ UNSC, Letter dated 91/03/20 from the Secretary-General addressed to the President of the Security Council (20 March 1991) U.N. Doc. S/22366 (<<https://www.un.org/depts/oip/background/reports/s22366.pdf>>) accessed 24 January 2023

and 230.000 pregnant or nursing women.⁹⁷ Regarding the *accessibility of food*, market prices skyrocketed after the implementation of the embargo, resulting in hyperinflation. The costs of certain foodstuffs were several thousand percent higher than before.⁹⁸ Families were forced to sell their homes and other belongings to be able to afford food.⁹⁹

During the sanctions period in Yugoslavia, the *standard of living* also gradually deteriorated and the overall economy declined drastically. Consequently, the number of people without a job reached up to 70 percent. In 1994, the household-income has dropped to one-tenth compared to 1990. About one-fifth of the population was faced with poverty, and about 500 thousand of those were living in severe poverty. Yugoslavia was also faced with *food shortages*. On top of that, there was *hyperinflation*, which arrived at 313 million percent in 1994. It has to be noted, however, that other factors than the sanctions worsened the social and economic structure. The economic crisis, the war, and the several thousands of refugees and their demand for food, healthcare, and shelter significantly worsened the social and economic structure.¹⁰⁰ Further, the former Yugoslavian states were largely dependent on trade with each other, which is why the severance of these boundaries eventually had greater repercussions than the disappearance of foreign trade as a consequence of the sanctions.¹⁰¹

It is questionable whether the imposition of sanctions in these two cases was in accordance with the right to an adequate standard of living. This right is, as briefly mentioned above, at present time not widely considered to be part of general international law and the UN is currently not a member of the ICESR. However, an obligation of the SC concerning this right might be derived from the UN

⁹⁷ Michael W. Reisman, Douglas L. Stevick, *The Applicability of International Law Standards to United Nations Economic Sanctions Programmes* (1998) 9 (1) *European Journal of International Law*, 86–141, 104 (<<https://doi.org/10.1093/ejil/9.1.86>>) accessed 29 January 2023

⁹⁸ *Ibid.* 103

⁹⁹ Denis Halliday, former United Nations Assistant Secretary-General and Humanitarian Coordinator in Iraq, declared after his resignation in September 1998 that ‘*sanctions have had a serious impact on the Iraqi extended family system. We’re seeing an increase in single-parent families, usually mothers struggling alone. There’s an increase in divorce. Many families have had to sell their homes, furniture and other possessions to put food on the table, resulting in homelessness. Many young people are resorting to prostitution.*’ (Speech delivered by Denis Halliday on Capitol Hill, 6 October 1998 from Campaign Against Sanctions on Iraq, “Quotes by and about Denis Halliday“ (*Quotes by and about Denis Halliday*) (<<http://www.casi.org.uk/halliday/quotes.html>>) accessed 23 January 2023 in Working paper (n7) para 67

¹⁰⁰ Reisman and Stevick (n97) 112-117

¹⁰¹ de Wet (n22) 240

Charter, which states, that the UN seeks to ‘*promote higher standards of living*’ and ‘*solutions of international economic, social, health, and related problems*’.¹⁰² These provisions can be seen as having been authoritatively interpreted by the ICESR and the UDHR.¹⁰³ Comprehensive economic sanctions almost by definition have an impact on the standard of living of the targeted population, which is why a too extensive interpretation might not be justified given the overarching goal to restore international peace and security. But the actions of the SC should not disproportionately deteriorate the living standards within the targeted country. And even though the precise obligations arising from the right to food might be unclear, the existence of the right should at least mean, that it is not allowed to cause or contribute to hunger or starvation among uninvolved individuals.

C. SANCTIONS AND THE RIGHT TO HEALTH

Sources, content, and scope of the right to health

The right to health is dependent and partly also included in the above-mentioned rights. The ICESR describes its content as follows:

‘The States Parties to the present Convention recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.’ This includes ‘The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (...) The prevention, treatment and control of epidemic, endemic, occupational and other diseases [and] The creation of conditions which would assure to all medical service and medical attention in the event of sickness.’¹⁰⁴

¹⁰² Art. 55 UNC

¹⁰³ UNCESCR, *General Comment No. 8: The relationship between economic sanctions and respect for economic, social and cultural rights*, 12 December 1997, E/C.12/1997/8, para 7 (<<https://www.refworld.org/docid/47a7079e0.html>>) accessed 24 January 2023, states, that provisions of the Charter that relate to human rights (Art. 1, 55 and 56) must still be considered to be fully applicable when the SC imposes sanctions and ‘cannot be considered to be inoperative, or in any way inapplicable, solely because a decision has been taken that considerations of international peace and security warrant the imposition of sanctions’; Reinisch (n24) 862.

¹⁰⁴ Art. 12 ICESR

According to the CESCR General Comment, the obligations following from this right include the *accessibility* of safe and potable *drinking water*, *essential drugs*, as well as adequate *health-related facilities*.¹⁰⁵ The right to health is also recognized in the UNCRC.¹⁰⁶

The wars in Iraq destroyed the *drinking water* supply and the sanitation system collapsed. The population was forced to drink contaminated water from rivers, which multiplied the number of infectious diseases. For instance, cases of diarrhea increased, cholera cases rose more than tenfold and typhoid rates reached near epidemic rates compared to before the war.¹⁰⁷ The deterioration of the water and sanitation system, coupled with *medicine shortages* contributed to a considerable number of deaths. The UN Working paper reported on the situation in Iraq: 'Owing to the lack of medical supplies, it was estimated that, by 1997, 30 per cent of hospital beds were out of use, 75 per cent of all hospital equipment did not work and 25 per cent of Iraq's 1,305 health centres were closed.' Multiple *health facilities* were damaged and there was no replacement of basic equipment.¹⁰⁸ These consequences occurred despite the exemption of medical supplies in the embargo. Complications especially materialized as a consequence of the 'dual use' system. This provision forbade the transfer of goods that could potentially be diverted for military use. Due to this prohibition, decisions concerning the exemptions for medical supplies were often either denied, confused or delayed.

¹⁰⁵ UNCESCR, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)* (11 August 2000) UN. Doc E/C.12/2000/4, para 43 (<<https://www.refworld.org/pdfid/4538838d0.pdf>>) accessed at 24 January 2023

¹⁰⁶ Art. 24 UNCRC: 1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services. 2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: (a) To diminish infant and child mortality; (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care; (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution; (d) To ensure appropriate pre-natal and post-natal health care for mothers (...) (f) To develop preventive health care, guidance for parents and family planning education and services. 3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children. 4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. (...)

¹⁰⁷ George A. Lopez, David Cortright, *Economic sanctions and Human Rights: Part of the Problem or Part of the Solution?* (1997) 1(2) *The International Journal of Human Rights*, 1–25, 16 (<<https://doi.org/10.1080/13642989708406664>>) accessed 29 January 2023

¹⁰⁸ de Wet (n22) 227-236

Equally, in the sanctions period in Yugoslavia, there was a shortage of water-purifying chemicals, which worsened the *quality of the water* and led to a growing number of infections transferred through water droplets. Despite the inclusion of an exemption for medical supply, the *availability of pharmaceuticals* dropped to half between 1991 and 1995.¹⁰⁹ The government could not afford drugs, medical supplies, and equipment. Vaccinations for eg measles, rubella, and mumps were short of supply. Consequently, the amount of immunized children dropped and outbreaks of viral infections increased, although they were nearly eliminated prior to 1991. The provision of *medical services* also deteriorated due to the impediment of oil and gas imports.¹¹⁰ The above-mentioned consequences, however, again remain difficult to directly trace back to the sanctions.

It is equally doubtful whether the sanctions in these two cases were in accordance with the right to health. An obligation of the SC concerning the right to health could also be derived from the UN Charter.¹¹¹ Out of these provisions, it can be concluded, that comprehensive economic sanctions should strive not to undermine access to critical health facilities, goods, and services, which in turn threatens the very existence of individuals.¹¹²

V. CONCLUDING REMARKS

There are several challenges in determining the legality of comprehensive economic sanctions from the perspective of international human rights law. At first, it seems very common sense to assume, that the SC is subject to human rights limitations when exercising its function to maintain international peace and security. But this assumption is debatable, and it is not without difficulty to find a rationale supporting it. Considering its political nature, the SC can be viewed as enjoying a wide margin of discretion. This however, does not exempt the SC from its human rights obligations in a contemporary reading of international law, first and foremost the UN Charter. While there might not be any explicit provisions supporting this, the ones that are present are sufficient to create

¹⁰⁹ Ibid. 240-242

¹¹⁰ Ibid.

¹¹¹ Art. 55 states, that the UN seeks to 'promote higher standards of living' and 'solutions of international economic, social, health, and related problems'

¹¹² The UN Sub-Commission on the Promotion and Protection of Human Rights, Subcommission on Promotion and Protection of Human Rights Concludes Fifty-first Session (27 August 1999) UN Doc. HR/SC/99/31 (<<https://www.ohchr.org/en/press-releases/2009/10/subcommission-promotion-and-protection-human-rights-concludes-fifty-first>>) accessed at 24 January 2023, stated: 'any embargo that condemned an innocent people to hunger, disease, ignorance and even death to be a flagrant violation of the economic social and cultural rights and the right to life of the people concerned and of international law'; de Wet (n22) 222 ff.

constraints for the SC. Likewise, human rights that are considered to be part of general international law, such as the right to life, should bind those IOs - and therefore the UN and the SC - which engage in conduct that is likely to affect human rights. Other rights included in international human rights conventions, such as the right to an adequate standard of living and the right to health, should, at the very least, not be disregarded by the SC. Fundamentally, the SC has to balance *human rights of individuals*, while at the same time maintaining *international peace and security*. In consequence, this should also extend to an effective accountability mechanism in order to provide remedies for victims of human rights violations that are attributable to measures of the SC.

Thereupon, it is crucial to underscore that since the very first sanctions were imposed, institutional practice has shown, that the SC has increasingly recognized the necessity to avert undesirable humanitarian consequences.¹¹³ The most significant development in this respect is the shift of the UN policy to targeted sanctions. While this did not successfully eradicate all the difficulties connected to comprehensive sanctions, it did constitute a significant step forward concerning the morality and legality of measures of the SC. This might also have significant implications for other sanction regimes, making it necessary for those to take fundamental human rights into consideration and actively avoid unnecessary suffering among uninvolved individuals. In the end, the increased compliance of the SC with international human rights law is indispensable for avoiding the undermining of the legitimacy of the SC and for warranting an effective maintenance of international peace and security in the long term.

¹¹³ See UNSC Res 1325 (31 October 2000) UN Doc S/RES/1325; Res 1333 (19 December 2000) UN Doc S/RES/1333

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