

Economic Sanctions and Human Rights: A Delicate Balance

by Michael P. Malloy

The once and future radical Angela Davis was recently quoted in the *New York Times* criticizing U.S. economic sanctions against Cuba on the grounds that they only make a bad economic situation worse. While one may wonder whether this observation was intended by Ms. Davis to illustrate that economic sanctions are ineffective, or too effective, her remark implicitly raises a serious concern for those who make and those who study economic sanctions policy:

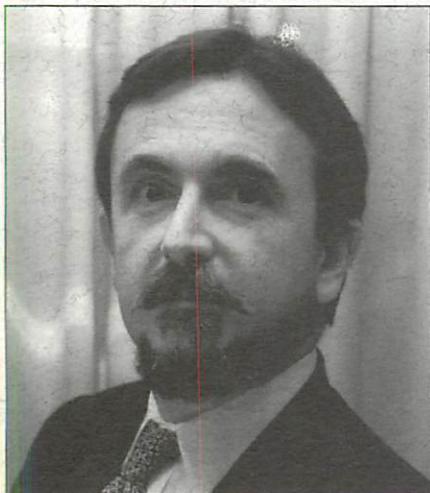


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Michael Malloy

What is the proper balance between the deployment of economic sanctions and the effects, possibly unintended, on human rights concerns?

The interplay between human rights and economic sanctions is fraught with tension. The United States is the most frequent user of international economic sanctions in the world. U.S. sanctions programs often involve broad prohibitions against trade and finan-

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The Quandary of Economic Sanctions

by Gabriel Eckstein

Economic sanctions as a means of achieving political change have become commonplace amongst the world community. Often, the objective espoused by the nation or group of nations seeking their use has been the enforcement of human rights. Countries like Cuba, Iraq, South Africa, and Haiti, historically inimical to human rights protection, have all been the focus of such initiatives. Though generally well-intentioned, many of these efforts caused serious humanitarian consequences to the populations of the target countries.

Whether economic sanctions are an effective tool for advancing individual liberty and human dignity is a question that transcends the political perspective of human rights and reaches the realm of ethics and morality. It challenges the basic sense of right and wrong and further questions whether the creation of an environment of deprivation and economic need among the general populace, at least on a temporary basis, justifies the greater goal of advancing human rights.

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cial transactions between persons subject to U.S. jurisdiction and particular target states or their nationals. When implemented effectively, such programs can have a dramatic impact on the basic human rights of subsistence and security. This presents the question whether policy makers should adjust sanctions programs to ameliorate such possible effects.

In recent years, economic sanctions have even been mobilized specifically — or at least ostensibly — in an effort to vindicate human rights. The case of Southern Rhodesia/Zimbabwe in the 1960s and 1970s provides one such example, while the case of South Africa is a more recent one. Other situations, like Haiti and the former Yugoslavia, arguably represent situations in which at least one major objective of the sanctions is the vindication of human rights. Much the same may be said for U.S. sanctions against Cuba. These

cases raise the question of whether sanctions can be considered effective in vindicating human rights when they inflict considerable harm on those they ostensibly seek to benefit.

Sanctions imposed in the past, such as those imposed during WWII, the trade and financial sanctions against China, the Iran hostage sanctions, and the ongoing Iraqi sanctions, have been very effective means of achieving well-defined foreign policy objectives. Whether imposed for such broad policy reasons or in response to specific human rights concerns, sanctions usually, and perhaps inevitably, involve an immediate human cost within the target state. Short of abandoning sanctions as foreign policy tools, however, there is probably no practical way to ensure that sanctions *both* narrowly affect only the targeted state actors *and* still remain effective.

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The human cost of sanctions, even those mobilized for legitimate reasons, is therefore a cause for genuine concern. As Senator Richard Lugar observed in 1986, when the Congress was considering the enactment of

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extensive sanctions against South Africa, “[w]hatever steps might be adopted with respect to South Africa, they will have to be taken with both a sense of tragedy and reality.”

What, then, is the reality of economic sanctions in relation to human rights? I would suggest that there are two dimensions to this question. First, should the construction of an economic sanctions program always proceed on the assumption that harm to the interests of subsistence and security must be avoided? The answer in U.S. practice is mixed. For example, under the International Emergency Economic Powers Act (IEEPA), the principal statutory authority for non-wartime U.S. sanctions, the President lacks the power to regulate or prohibit personal communications not involving the transfer of any thing of value. Furthermore, he may not regulate uncompensated transfers of “articles” for humanitarian aid unless he determines that

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the transfers would either (1) seriously impair his ability to deal with the emergency situation, (2) be in response to coercion against the potential donor or recipient, or (3) endanger U.S. armed forces. Beyond those situations, however, the IEEPA does not limit the executive from fashioning sanctions that have direct or indirect effects on

human rights. Thus, in the Iraqi case, a significant impact on the civilian population followed fairly directly from the imposition of U.S. sanctions. The same may be said for the Cuban sanctions, which are based on a pre-IEEPA statute, the Trading With the Enemy Act. Furthermore, not even this modest “humanitarian aid” exception applies under section 5 of the United Nations Participation Act of 1945, which serves as the statutory authority (at least in part) for the sanctions imposed on Yugoslavia and Iraq. Hence, in current practice, it is almost entirely within the discretion of the executive to decide that adverse effects on human rights interests are merely incidental — and tolerable — costs of an economic sanctions program.

The second and more difficult dimension of the problem concerns the underlying legitimacy of sanctions programs that affect human rights concerns. Broad, cogent policy interests concerning threats to the foreign policy, national security, or economy of the United States — the typical factual predicates under IEEPA for the imposition of sanctions — have generally trumped concerns regarding their

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direct or indirect human rights. Assuming the seriousness of such threats, this trumping may be unavoidable.

A more poignant situation arises, however, when the foreign policy objective that triggers the use of sanctions is itself a human rights objective, as, for example, in the case of South Africa. Throughout the period of broad-scale sanctions against South Africa, beginning in 1985, continuous concern was expressed over the disproportionate impact of sanctions upon the oppressed black South African population. Was it appropriate, for example, to impose sanctions against South Africa that resulted in exacerbated near-term economic privation of blacks in the interests of the long-term objective of moving South Africa beyond its policy of apartheid? Despite the difficulty of this question, the firm, though anguished, answer of many in the black South African community was that this

hardship was part of the price that had to be paid to achieve the end of apartheid and vindication of human rights in South Africa.

Essentially, the strategy of any effective sanctions program is to induce dysfunction in the trade and financial payments system of a target state with the goal of furthering a specific policy objective critical to the national inter-

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est. Given the concerns involved, it is probably counterproductive to limit the use of sanctions in an abstract or general way in order to protect human rights concerns. Indeed, sanctions programs that try to be “surgical” and avoid unnecessary effects are often relatively ineffective. The Southern Rhodesian sanctions and the early stages of the Iran hostage sanctions come to mind. Nevertheless, responsible policy also counsels that a well-constructed sanctions program should not

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inflict gratuitous collateral damage. The hard fact, however, is that sanctions are not delicate surgical tools but explosive devices. Effective sanctions are usually broad-based, and almost necessarily have extensive adverse effects on the population of the target state. Whether and how to use such sanctions are questions that should be asked before they are unleashed, not after they are deployed. ☹

