

COMPLIANCE EFFECTUALITY OF INTERNATIONAL SANCTIONS: SUBJECTIVITY VERSUS OBJECTIVITY

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ABSTRACT

This article examines the problematic of international sanctions within the framework of international politics. Notwithstanding changes in global international relations, particularly in respect of international interdependence and the diffusion of power, there has remained at the heart of the UN, a good deal of “preservationist” or status quo fervor, based on a core of stabilising guardian powers. Politics of sanctions reflects the reality of “high ideals” compromised by what is achievable. The article examines sanctions problematic within the framework of mechanism to translate intentions into reality. The article argues that domestic problems and pre-occupation define the limit of expectations, the range of possibilities and the nature of constraints and leverages in the hands of those engaged in the conduct of foreign policy. One wonders whether the paramount of the “Big five” managers is not a conventional system of power politics thinly disguised, consisting of efforts to manipulate others to satisfy self-regarding interests. The paper further contends that efforts of states to enforce sanctions have always complicated their other policy goals in the target states. Finally, it suffices to say that because politics has to do with the set of institutions and rules by which social and economic interactions are governed, sanctions are eminently political and politics is obviously tied to the sanctions phenomena.

Key Words: Compliance Effectuality, Politics, Sovereignty, Sanctions, Diplomacy, Subjectivity, Objectivity.

Introduction

The purpose of sanctions is to bring about a behaviour considered to be in conformity with the goals and standards of a society and to prevent that behaviour which is inconsistent with these goals and standards. But there is difficulty of enforcing standards against organised groups, which as states, make exclusive claims on governmental authority and on the loyalty, and support of their citizens.

The Veto power over Security Council (SC) decisions enjoyed by the five permanent members – Britain, China, France, (the former Soviet Union) Russia, and the United States – set them and their allies and clients beyond the reach of United Nations sanctions from the outset, and East – West hostility brought paralysis to the Security Council throughout the Cold War years.¹ Ideological/strategic rivalry between the superpowers was a dominant factor in sanctioning.

International Sanctions seem to have been constantly imposed in recent years. Comprehensive sanctions mandated by the United Nations Security Council (UNSC) were in force against Iraq; arms embargoes have been imposed on Angola, Liberia, Sierra Leone, Rwanda and Somalia to mention a few. There were also UN sanctions on Haiti from 1993 to 1994. Sequel to the Crimean Crisis and the subsequent annexation of Crimean by Russia some sanctions are currently in force against Russia. Some governments, led by the United States and European Union, imposed sanctions on Russia's notable and high-level central government personnel. The Russian government retaliated in kind, with sanctions against Canadian and American individuals with complete ban on food imports from the European Union, United States, Norway, Canada and Australia.

While the 1990s failed to usher in a new international order they undoubtedly witnessed a transformation of the international landscape. In 1991 for example, the Soviet Union disintegrated and Yugoslavia began to fall apart.

¹ Doxey, M.P. (1996) *International Sanctions in Contemporary Perspective* (Macmillan Press Ltd. London) see Harrap's Dictionary of Law and Society: Harrap Books Ltd., Clarks Robinson Ltd., Great Britain (1989) see also A Dictionary of Law (1994) New Edition (Oxford University Press, New York).

The revitalization of the Council was dramatically illustrated by its prompt response to Iraq's invasion of Kuwait in August 1990; other cases of sanctions followed in rapid succession. The past few years have provided the UN with major opportunities for contributing to international peace and Security, some successfully met, others either bungled or missed. One result has been the accumulation of several well-documented UN sanctioning experiences, which can be studied and set alongside the cases of multilateral sanctions.

Political structures

This article examines sanctions problematic, their political structures, objectives management and Dynamics: Questions explored include, among others, mechanism to translate intentions into reality.

First, in regard to structure, the pluralistic regime of 1945 depended on a core of hegemonics (stabilizing guardian powers), five in number, the pillars of the SC. Their prestige and power to move ensured that change was to be the preserve of the strong, standing in a common UN front. Meanwhile, both at the UN and in the world outside there has been a growth of interaction and fluidity among smaller units. The original reliance on benevolent hegemonies has given way to the realistic perception that the contemporary world is interdependent and multivariate in national characteristics, perceptions and needs. From the 1960s into the 1990s, change has tended to stem from non-alignment, which disdains allegiance to a common front. Yet notwithstanding changes in global international relations, particularly in respect of international interdependence and the diffusion of power, there has remained at the heart of the UN a good deal of "Preservationist" fervour. As J.S. Nye has recently pointed out, the UN is still a "layer cake" of stratified, institutional power with little sign of it crumbling or being eaten away by external forces. The permanent powers stoutly resist any modification of their ascendancy. With the end of the Cold War, UN members have begun collectively to address crisis and conflict at regional and national level. However, what is equally apparent is that the process of change, or rather its likelihood still seems to depend upon the prime movers, the common front of certain major powers. They have the say-so that governs the possibility of action by the UN's SC.

It has become a cliché to assert that world politics were transformed by the end of the Cold War. The collapse of the Soviet Union is accompanied by a fundamental reordering of political relationships at both the international and domestic levels. Internationally, the bipolar structure of global political conflict is superseded by a hegemonic coalition of Western powers led by the US. With reference to domestic politics, authoritarian leaders have come under pressure for political reform and many surrender some or all of their powers to more liberal, even democratic regimes. Other factors, particularly those deriving from domestic political processes, help to explain why authoritarian regimes collapse so frequently in recent years noting instances in which Apolitical conditionalities attach to foreign aid appear to have moved the democratisation process forward in selected African Countries.

It seeks to show that international pressures are best understood in terms of their interactions with domestic political factors such as the presence and timing of mass protest and the relative resourcefulness of state and social actors. Just how committed is the international community to genuine democratisation in developing countries? It is argued here that because the Western powers pursue numerous and sometimes conflicting goals in developing countries, they are regularly led to maintain support for some less than democratic regimes. Indeed, the West is primarily interested in an orderly and stable world in the aftermath of the Cold War and will pursue democratisation only to this larger strategic objective. It has been noted that human rights are often subordinated to other foreign policy concerns and that donors are reluctant to invoke or sustain sanctions against large and important nations. These arguments are confirmed with recent evidence from Africa where Western Security and economic interests have sometimes contributed more to political continuity than to regime change (e.g. in Nigeria under Gen. Abacha).

Earlier on, when it was pointed out to UN Secretary-General U-Thant, during the Nigerian Civil War that the UN Charter makes provisions for overriding the sovereignty clause in matters concerning human rights.

As regards non - interference, the new World Order today is informed by collective interference and/ or "humanitarian diplomacy". In other words, if a country is engulfed in a deep crisis and the international community decides to interfere to bring it to an end, then they will be able to curtail the crisis. And if they decide not to interfere as in Rwanda, it ends up in genocide. In addition, Yoweri Museveni is of the opinion that non-interference is obsolete. This is because refugees pains of mis-governance and conflicts in the world, political crises threatened human rights, social order and the very survival of the states concerned.

Instead, in a qualitative shift from the old international system based on state Sovereignty, national self-determination and balance of power world order, is, in Kegley's view, coming to be centred on human rights, as secured through international law, international institutions and collective security operations with a considerably-enlarged role for "NGOs".¹

The bond that ultimately holds world society together is not any overriding common purpose or spiritual values, but power.² The essence of power is the ability to exercise compelling pressure irrespective of its reasonableness. This explains the pre-eminent positions of states in international society. On the level of international customary law, the rules governing the principle of sovereignty must form the starting 'point of any inquiry'.³ Transnational erosion and international integration notwithstanding, the state remains what it always has been: an international actor in its own right and a sphere of internal and external protection of its citizens. That protection can only be guaranteed within a given territorial frame work; likewise, universal human rights can only be realized within the legal framework provided by the state. The state remains as the fundamental entity of international relations despite the demonstration of its obsolescence. So long as it continues to win the allegiance of men, the doctrine of non-intervention bears a closer relation to reality than the progressive doctrines predicated upon the

¹ Kegley, Jr. C.W. (1995) *Controversies in International Relations: Realism and the Neoliberal Challenge* (London Macmillan) see Told, J.E. (1971) "The 'Law-making' behaviour of States in the UN as a function of their location within formal World regions" *Int'l studies Quarter* 4th (ed) 15:297-317.

² Morgenthau, Hans (1967) *Politics Among Nations: The Struggle for Power and Peace*. (New York: Alfred A. Knopf), "To intervene or not to intervene". (*Foreign Affairs* CLX (3): 425-36. See "Sanctions" Strategic Assessment I, X (3): 425-36 (1996) – Instruments of US Power by National Defense University, Institute for National Strategic studies.

³ Schwarzenberger, G. (1962) *The Frontiers of International Law*. Stevens & Sons Ltd. London.

disappearance of the slate, its civilization by law, or the establishment of a super authority over it.⁴

A good deal of the debate and controversy at the UN has centred on three main areas; all having to do with sovereignty. Incompatible interpretations of certain Charter principles such as sovereignty, domestic jurisdiction and the right of regional association are more in this debate - also ideological standpoints which may be defined as elements of a belief system which a group professes and which is self-contained, consistent and self-justifying. Generally, it incorporates a world view and enables analysis, explanation and prediction of political and economic relationships in international society.

Sovereignty issues prised the superpowers apart. A theoretical definition of sovereignty is that it is the recognition by all states of a particular state's independence territorial integrity and inviolability. Realistically, in legal eyes, it is the residue of power which a state possesses within the confines laid down by international law. For instance, the sovereignty of the US has always been fiercely protected. Fortress America reserved the right not to sacrifice any of its independence of judgement. Its position as a founder member of the UN must never be hostage to fortune when collective policies are contemplated. Even so, down the years, the US came to recognise that membership of an international organisation imposes limitations on independent thought and enterprise.

Domestic jurisdiction - is an important Charter principle and a key element of state sovereignty. After all, the notion of keep-out was enjoined in Article 2(7) of the Charter which prohibited the UN interfering "in matters essentially within the jurisdiction of a member state". Is not each state the arbiter of what it regards as exclusive jurisdiction? What matters are "essential"? How far are states likely to heed the comments and suggestions let alone the criticisms of fellow members if these observations, as it were across-frontiers?. The Contemporary UN rarely has to cope with slates anguished because of political interference by others. The days of "eloquent importance" are largely over.

⁴ Dahrendorf, Ralf (1990) *Reflections on the Revolution in Europe*. (London: Chatto & Windus).

The UN is being urged on all sides to 'go in' to save people from famine, violated basic human rights or to interpose between combatants in civil strife. The primacy of universal human values has been substituted for the battle between communism and democratic capitalism. Will this endure? Some polarised tensions remain in what many claim is now a unipolar society. For example, US wariness over a majority in the General Assembly which may not go its way, disenchantment over UN internal management and finance, and doubts about intervention and domestic jurisdiction. In what ways can young states work with others without compromising their own legitimate independence? Enfranchisement confers autonomy but a stale, economically undeveloped and buffeted by harsh, external market forces, may well find sovereignty a delusion offering little in the way of independence or added resource. One other philosophical point, is to ask, how far can there be an assurance that a UN member state represents a collective good for its citizen? Thus sentiments have been clearly enunciated in the UN Charter. Yet in places like Angola, Burma, Nigeria, Rwanda and parts of Latin America, many people, perhaps millions of them, have come to regard their state as an oppressive manager of elitist power and privilege - far from the spirit of the UN Charter. It is not easy to see how this "problem may be resolved. However, it may be suggested that any state henceforth, seeking admission to the UN should, before acceptance, prove to the organisation both its impartiality (non-alignment) and the extent of its domestic observance of justice and human rights.

It boils down to the fact that sovereign states are here to stay. But more tolerance will be needed. As the UN Secretary-General in his Agenda for peace in 1992 puts:

The time for absolute and exclusive sovereignty, however, has passed: its theory was never matched by reality. It is the task of leaders of states today to understand this and to find a balance between the needs of good governance and the requirements of an ever more Interdependent world.⁵

A consideration of the subject of sovereignty may appear to be timely and topical. Without any detailed search, recent literature has yielded no less than ample references to it. It was reported

⁵ External sovereignty is the recognition in international law that a state has jurisdiction (authority) over a territory. It means the state is answerable for that jurisdiction in international law see Kegley, Jr. C.W. (1995) *Controversies in International Relations: Realism and the Neoliberal Challenge*, London: Macmillan, Op. Cit.

that government of China has said that it will have troops ready to safeguard state sovereignty, reunification and territorial integrity in Hong Kong after Britain withdraws in 1997. Second, the Chief Minister of Gibraltar was reported as having said that "any Government will do anything without prejudicing British sovereignty, to try to persuade Spanish politicians to take a different view of Gibraltar, External sovereignty matters because all states claim the right to regulate the relationship between their country and the rest of the world. In fact, external sovereignty grows ever more important as the world becomes more interdependent. In reality, no state has full control over events within its borders but this does not annul the state's claim to sovereignty.

Interdependence between countries also clouds the issue of sovereignty. The expanding range of international commitments taken on by nation states reduces the room for manoeuvre available to governments. The emergence of international organisations such as the European Community, which has the ability to by-pass national parliaments in some areas, also threatens traditional ideas of sovereignty. These changes are slowly diluting the notion of sovereignty as the gap grows between the fiction of a single source of sovereignty and the reality of interdependence. Blackstone and Bodin have had their day. Canada, in 1995 launched a strong campaign against the General Sani Abacha regime for hanging an Ogoni human rights activist, Mr. Ken Saro-Wiwa and eight of his kinsmen. Following the ensuing frosty diplomatic relations between the two countries, Canada in March 1997, shut its High Commission in Lagos. But Lloyd Axworthy, the Canadian Foreign Minister, hinged the action on insecurity of the country's diplomats. Nigeria had earlier in September 1996 closed its Mission in Ottawa on grounds of cost. The move was however, seen in diplomatic circles as a ploy to pay Canada back for Canada's leading role in Nigeria's expulsion from the Commonwealth in November 1995.

But the topicality of the subject does not mean that it is ephemeral. Writers have been aware of the features that constitute sovereignty since the earliest days. The question is whether the use of the word 'Sovereignty' really contributes significantly to contemporary political debate - especially on the plane of international relations. Sovereignty on the international plane is the kind which people appear to have in mind when by reference to it they oppose the impact of,

say, European Community decisions on British policy and laws. There is a good number of situations in which states have already accepted some constraints upon their freedom to conduct themselves as they please within their territories-auto-limitations. But what does matter actually, is that these limitations, extensive though they may be, operate without diminishing the legal equality of statehood of the states involved.⁶

With regard to sovereignty on the international plane, that must be seen largely as myth except when it is used as a word to describe a state's title to a territory. Whatever may have been the position in the 19th century and earlier, national sovereignty certainly does not now convey the idea of the same degree of power in the international sphere as is possessed within Britain by parliament. However, the state remains a sovereign state in international law and continues to be able to guide its future destiny within the limits that it has itself accepted. It should be noted that if the reference to national sovereignty is merely general and is not accompanied by the kind of analysis just described, then its invocation can only be intended to appeal to man - rational factors, to emotion or sentiment. If so, it is less than real and has no significant political relevance.⁷

Furthermore, sovereignty as a normative and legal concept may circumscribe a territorially defined legitimacy, but has only limited utility for an understanding of the nature and practice of world politics in the 1990s - refers to a form of sovereignty both less hegemonic and parsimonious than previous forms, but reflecting the far more complex nature of within state and state to state relations. This form of sovereignty addresses the paramount issues of state - society relations instead of focusing on the state as a monolithic actor in a rational model of international politics.⁸ Among the central facets of this issue is the question of just what

⁶ So "Sovereignty" was the term used to describe the right of a state freely to exercise its power under customary international law without the permission of any other state in relations to persons, things, and relationships within its territory. See Abel, R.I. (1995) *Politics by other means – Law in the struggle against apartheid 1980-1994*. (Routledge Inc. London) see Muravchik, Joshua (1986) *The Uncertain Crusade: Jimmy Carter and the Dilemmas of Human Rights*. (Lanham, MA: Hamilton).

⁷ Lauterpacht, Eli (1997) "Sovereignty Myth or Reality?" *International Affairs* 73, 1, (137-350) see Nincic, D. (1970) "The political and ideological substance and legal forms of the theories of limited sovereignty" *International Problems* 11: 5-20.

⁸ Slater, R.O. et al (1993) op. cit. see also Jonsson, C. ed (1982) *Cognitive Dynamic and International Politics* (France Pinter Publishers Ltd.)

activities are to count as intervention. Some wish to define intervention narrowly, to refer only to military (that is physical) coercion. Others wish, more broadly, to include any form of clearly coercive activity such as threats or economic embargoes, on ground that all such ventures cause harm and may result in human suffering. Yet others would define intervention quite broadly, including any attempt to alter the on going policies or courses of action of other nations. These definitions would encompass-behind-the scenes diplomatic manoeuvring and public posturing as well as private exhortations and messages. The justification for this broad categorization would be that any attempt to alter the on going course of action of those in other nations represents an intrusion in their affairs, and may have implications for the way they conduct their lives.

It seems that in many cases non-interference has not only been morally wrong but is contributed to the configuration of violent conflicts. Although democratic reforms in Eastern and Central Europe, in former USSR, in Latin American countries as well as in South Africa, had mainly domestic roots, although their success or failure will dependly

Overwhelmingly on the efforts of the peoples of these countries, it would be wrong to underestimate the role of external factors in internal reforms. It is becoming increasingly clear that mistakes made and opportunities lost by other states or by the world community as a whole have sometimes been very costly as shown by cases of humanitarian calamities in Rwanda, Somalia, Liberia, the former Yugoslavia and more recently Sierra Leone and East Timor. Richard Falk observes that:

*Great visionary opportunities for the enhancement of the human condition are contained within the fluidity of circumstances that make this period of history turbulent and fraught with contradiction and surprise.*⁹

Often measures of encouragement and constructive engagement are usually more effective than punitive counter-measures. However, the latter cannot be altogether excluded, but should depend less on the political relations between a violator and the responding states.

⁹ Falk, R. (1981) *Human Rights and State Sovereignty* (New York, Holmes and Mcier) Chap. 1. See Sieghart P. (1983) *Human Rights in International Law*. Oxford Clarendon) see Fawcett, J.E.S. (1967) "Human Rights and Domestic Jurisdiction" in Evan Luard (ed) *The International Protection of Human Rights*. (London, Thames and Hudson) p. 301.

One of the most controversial problems of international law and politics has for many years been the issue of humanitarian intervention, i.e. intervention when the professed reason for intervening is the violation of fundamental human rights, when the professed purpose of the intervention is carried out in the name of the international community, or more generally, of humanity. In 1905, Oppenheim himself stated:

*Should a state venture to treat its own subjects or part thereof with such cruelty, as would stagger public opinion of the rest of the world would call upon the powers to exercise intervention for the purpose of compelling such a state to establish a legal order of things within its boundaries sufficient to guarantee to its citizens an existence more adequate to the ideas of modern civilization.*¹⁰

Sir, Hersch Lauterpacht also quoted in Oppenheim in 1955 writes:

*There is a substantial body of opinion and practice in support of the view... that when a state renders itself guilty of cruelties against and persecution of its nationals in such a way as to deny their fundamental rights and to shock the conscience of mankind, intervention in the interest of humanity is legally permissible.*¹¹

In short, if humanitarian intervention is ever to be justified, it will only be in extreme and very particular circumstances. Therefore, the justification and explanation which were given by states when they intervened by force in other states were not without legal significance; they constituted the opinion juris of states on the issue of intervention. However, states have referred to humanitarian concerns as a moral rather than a legal basis for intervention (and certainly not the only or the main one), and humanitarian consequences have also not been the only, and often not even the main result of such interventions. One of the moral as well as legal arguments against humanitarian intervention is that it interferes with the internal affairs of states. For example, the Declaration on the inadmissibility of intervention, passed by UNGA on 21 December 1965, condemns armed intervention “for any reason whatsoever” in the internal affairs of states and contains no exceptions. There are many other documents which strongly emphasize the principle of non-intervention.

¹⁰ Oppenheim, L. (1955) *Peace: International Law: A Treatise*. (8th edn) (Longmans, Green and co. Ltd. London).

¹¹ Oppenheim L. (1955). Ibid.

However, human rights and their violation are no longer simply the internal affairs of states. In 1923, the Permanent Court of International Justice, in its advisory opinion on Nationality Decrees in Tunis and Morocco, had emphasized that the question of whether a matter was society within the jurisdiction of a state was essentially a relative question, depending on the development of international relations. The development of international relations. The development of international relations, especially after the Second World War, has led to the emergence of a substantial body of international human rights norms. International law is based on and includes not only moral, but also practical political consideration and, although questions concerning the legality and morality of humanitarian intervention remain relevant, it seems that in our disorderly world, the most important question to be asked, should be: can an outsider's interference really protect human rights; and are other states and peoples ready to use sufficient resources and efforts in order not only to stop atrocities being committed by authorities against their own people, but also to guarantee that such atrocities do not recur immediately after the intervention has ended?

One may believe that issues of political expediency put even more severe constraints on humanitarian intervention than the requirements of legality and morality. Other motives, especially economic imperatives are paramount. Therefore, humanitarian intervention, in order to be morally and legally justifiable, has to be successful. Suffice it say that it is politics which is cross-fertilized with morality and which should be exercised in a legal framework. It may not be necessary to curtail human rights diplomacy, but one should try instead to get rid of the hypocrisy and double standards. In the present international system which is much looser than the rather rigid, disciplined, bipolar Cold War international system – a world which is becoming more and more interdependent, the domestic characteristics of states and internal developments in those states affect international relations much more directly. Hence the increase in the importance of human rights issues in foreign policy. Finally there is more room for relatively effective diplomatic efforts with a view to promoting and protecting human rights.

This section addresses the nature of the present international system and the role of international law and institutions within it and the role of human rights law. To argue that international law is not binding because of its lack of organized sanctions is tacitly to accept the analysis of obligation contained in the theory that law is essentially a matter of orders backed by

threats. Rules generally call for some sacrifice of private interests and are generally supported by serious demands for conformity and insistence criticism of deviation. The simplest forms of society should be adequate to restrain those too wicked, too stupid or too weak to obey the law. But, just because the simple truisms which hold good for individuals do not hold good for states, and the factual background to international law is so different from that of municipal law, there is neither a similar necessity for sanctions (desirable though it may be that international law should be supported by them) nor a similar prospect of their safe and efficacious use.

What predominate in the arguments, often technical, which states address to each other over disputed matters of international law, are references to precedents, treaties, and juristic writings, often mention is made of moral right or wrong, good or bad. No doubt in the relations between states there are half way houses between what is clearly law and what is clearly morality, analogous to the standards of politeness and courtesy recognized in private life. A more important ground of distinction is the following: The rules of international law, like those of municipal law, are often morally quite indifferent. A rule may exist because it is convenient or necessary to have some clear fixed rules about the subjects with which it is concerned, but not because any importance is attached to the particular rule.¹² What does it mean to say that law is relatively autonomous when politics shapes law? When legal institutions may and must resist influence. There is conflict between law and morality in particularly acute term.¹³ But the morality preached is both selective and parochial and has far more to do with the private vision of its advocates than with the American or Western heritage.¹⁴

In applying a constitutive rule in the international system, we believe international law is extremely relevant to international relations. Can any theoretic insights be gleaned as to what role specific legal rules play in specific cases that are decided by specific decision-makers? We believe that international legal rules are created by the consent of states. Accordingly, we also

¹² International Law is a law without a policeman behind it: A body of vague rules for the attention of the political scientists and the amusement of the law student not much interested in law. See Hart, H.I.A. (1991) *The Concept of Law*. (Clarendon Press Oxford) Anold, G. (1997) *World Government by Stealth: The Future of the UN* (Macmillan Press Ltd. Great Britain).

¹³ Abel, R.L. (1995) *Politics by other means – Law in the Struggle Against Apartheid 1980-1994* (Routledge Inc. London).

¹⁴ Gotfried, P.E. (1992) "Sovereign State at Bay" (*Society* Sept/Oct) see Smith, A.P. (1979) *Sovereignty: The Enemy of Freedom and community* (London) see Owen, D. (1978) *Human Rights* (Tops field. MA: Jonathan Cape) see Wapner, P. (1995) "Politics beyond the state Environmental activism and World Civic Politics" *World Politics* 47: 311-340.

believe that the rules are created to reflect the interests of states. If this is the case, can these legal rules have an independent influence on state behaviour? The central problem, it is noted, is for regime theorists and international lawyers to establish that laws and norms exercise a compliance pull of their own, at least partially independent of the power and interests which underpinned them and which were often responsible for their creation. Furthermore, to avoid empty tautology, it is necessary to show not only that the rules exist and that they are created and obeyed primarily out of self-interest or expediency, but that they are followed even in cases when a states self-interest or expediency, but that they are followed even in cases when a states self-interest seems to suggest otherwise. It is easy to demonstrate that, in cases where international law is consistent with immediate policy goals, states will follow the law.¹⁵ But what about cases where there is a conflict between international legal rules and other specific policy goal?

First foreign policy decision-makers will almost always attempt to find out what international law says about a contemplated course of action. They may choose not to comply with the law, but they will wish to know its content. We believe that it would be rare indeed, for a state to be unconcerned about what the law provides. Similarly, the foreign ministries of virtually all states have certain individuals charged with informing decision makers about what they believe international law is on a particular issue.

Second, the higher the degree of authority and control of a particular rule, the more likely it is to be followed, even though it may be in the immediate short-term interest of the state not to follow the rule. This is also in line with the fact that a state does not particularly want to be perceived as a “law breaker”.

Third, the more easily the rule could be violated reciprocally to the detriment of the state in question, the more likely the state is to comply with the rule. Argentina, for example, is probably not inclined to shoot British diplomats, deny British flagships innocent passage through the territorial sea, or kill British prisoners of war, if Britain could reciprocate in kind. Clearly, for

¹⁵ Hurrell, A. (1993) “International Society and the Study of Regimes: Reflective Approach” in Volker Rinnerger ed. *Regime Theory and International Relations* (Oxford: Oxford University Press).

any comprehensive theory to be developed, scholars must examine the behaviour of a wide range of states and a variety of issues areas. The present work facilitates such a theory.¹⁶

Until states agree on the extent to which national jurisdiction is subordinated to or defined by international law, there will be little opportunity for international organs to pursue criminals into protective jurisdictions. Furthermore, only under certain regional codes of law (such as those of the European Court of Human Rights) does international jurisdiction address itself to individuals rather than to governments. This twin problem of jurisdictions and the place of the individual in international law and the relationship of international jurisdiction to national jurisdiction are major obstacles to a more effective international legal order.¹⁷

If law is associated with a body of principles, or rules, claimed by someone to be authoritative, then it is relevant to ask who prescribes these principles, who invokes them, in what arenas and with what results? How, and by whom are they formulated, applied and enforced and what are their effects? In the international system, the processes of law government are far less highly developed than comparable processes within nations. In the former, rules are often quite fluid until formalized in treaties, and are subjected to political strain in their interpretation and application. Similarly, each state has a stake in preserving the general structure of international law – the existence of a system of order effected through compliance with recognized/settled norms, even though, particular norms may be distasteful to a particular state. Suffice it to say that each state will seek to influence and change these norms which it dislikes, since there is always the temptation to evade adverse consequences in particular fact situations. However, the general interest in preserving the system is a force both for self-limitation as a means of inducing others to a similar response, and for the use of a variety of political pressures when others overstep the bounds of what is tolerable. Perhaps the purest analytical concept of “politics” is that in which the stronger influence or interest regulates the social distribution of values. Law exists, and legal institutions operate, only in particular political contexts.

There exists, therefore, a system of law-regime in which a large number of decision makers of formally equal authority participate. The peculiar feature of international law-regime

¹⁶ Beck, R.J. Arend, A.C. and Lugt, D.V. (1996) *International Rules* (Oxford University Press) see Readings and a discussion guide for a seminar on: Legal and Political Problems of World Order – by Mendlovitz, Saul H. (1962).

¹⁷ Jones, W.S. (1997) *The Logic of International Relations* (Addison Wesley Education Publishers Inc. Longman) see Morgenthau, H.J. (1962) “A Political Theory of Foreign aid” *American Political Science Review* 56: 301-309.

is its horizontal structure of coequal authority. States have not until recently been willing or able to create enduring joint institutional arrangements for recommending, prescribing, interpreting and enforcing international law. For political and strategic reasons the US cannot intervene in England or France, for instance, by means of military force. It is almost necessarily constrained, therefore, to use subtler but not necessarily less effective measures of political and economic intervention. Consequently, the legal values associated with non-intervention and those associated with sovereignty meet far less support under current international conditions than they did during the "balance of power" period. Moreover, the strong stands taken by the new nations and by many influential groups within older, more established nations against the vestiges of colonialism have the function of further reducing the insulation of the nation-state from the application of external and international pressures. The threat of foreign domination is one important factor in promoting national solidarity and legitimising domestic government. With the decline in the importance of the love nation, with the miracles of transportation and communication, and with the spread of American - Soviet rivalry to all areas of the world, almost every situation is vested with an international interest. It is ironic that the writers of the UN Charter were more conservative than the authors of the League of Nations Covenant in attempting to insulate national jurisdiction from external intervention. Their "realism" has not prevailed, however, against the use of force and against reprisal being likely to have same importance which the Charter writers intended.

Article 2(4) of the UN states:

“All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with purposes of the UN”.¹⁸

The only exceptions admitted to this prohibition, not simply on war but on any threat or use of force, are a narrowly defined right of self-defence in response to an armed attack" contained in Article 51, and the SC deciding to use armed force against a transgressor under Article 42. Furthermore, unlike the covenant of the League of Nations (L.N), the UN Charter (UNC) does not tie together its prohibition on War or the use of force with the effective functioning

¹⁸ International law was simply international politics or international morality, but certainly not law. See White, N.D. (1996) *The Law of International Organisations* (Manchester Univ. Press UK) see Northedge, F.S. (1980) "Law and Politics Between Nations. *International relations*. 1, pp 291-302.

of its collective machinery for the settlement of disputes. Unlike Article 10 of the covenant, Article 2(4) of the Charter is entirely divorced from the provisions of Chapters VI and VII which endow the SC with its powers.

Article 41 does not simply oblige members to impose sanctions against transgressors, but empowers the Council to impose mandatory economic sanctions against a state by a binding decision within the terms of Article 25 of the UNC. It is the SC which imposes the obligation and supervises compliance with it; it is not simply a treaty obligation with no supervision or control. The centralization of sanctions is accompanied by the even more ambitious provisions of the Charter which provide for the centralization of military coercion, by in effect, creating a UN army which the Council may decide to use against transgressing state. It is sufficient, however, to say for the moment that the drafters of the UNC certainly appeared to have remedied many of the defects of the international legal order. The question of whether it achieves such an aim will be considered.

Collective security can be defined as;

*The proposition that aggressive, and unlawful use of force by one nation against another will be met by the combined strength of all other nations. All will cooperate in controlling a disturber of the peace. They will act as one for all and all for one. Their combined strength will serve as a guarantee for the security of each.*¹⁹

The concept of collective defence being derived from the balance of power system, proved more acceptable to states than collective security. Despite the term, a state acting in COLLECTIVE defence of another usually does so out of NATIONAL self-interest, whereas a collective security system requires a state to act for the benefit of all states to maintain or restore international peace and security. This perhaps explains why the idea of collective security has made only tentative inroads into international relations and why the concept of collective defence, derived from the old balance of power system as dominated the search for world peace. Nevertheless, with the end of the Cold War in the late 1980s, the world has seen a revitalization of collective security particularly in the global body.

The minimum legal requirements for economic sanctions, is first of all a Resolution authorizing the use of such, and second, that resolution and subsequent Resolutions should specify clearly the extent, nature and objectives of the economic sanctions. Problems of lack of

¹⁹ Ibid (1996).

continuous control can be overcome by a clear and unambiguous mandate at the outset. If states using economic sanctions under this authority then wish to use more or less tougher measures, they must seek a change in mandate from the Security Council. Indeed, arguments of self-interest may embarrass the West into agreeing that the council can be used to fulfil purposes beyond narrow Western interests. Despite the success of the operation in Gulf, question marks hang over the extent that the UN simply delegated its power to group of willing volunteers. In order to combat these doubts, it must be admitted that whereas the prevention of aggression is indeed a legitimate and ultimate aim of a collective security system, the methods of achieving it need to be clearly stated and approved if the action itself is going to comply with the principle of Collective Security and also the rule of law.

States will generally only volunteer when it will serve their purposes as well as the UN's. Political considerations apart, the legality of these UN - authorised operations is still a matter of heated debate but there are now, within UN's terms, several precedents for recommendatory military action, and it is arguable that the SC has by its practice established a power to authorise states to take necessary measures with regard to a particular conflict or situation. On the other hand, it is arguably legally unacceptable to imply a power which goes against the express provisions of the Charter which clearly envisage collective security in the form of the centralization of armed force. In this respect the council, authorizations to use force to date, when there is often neither a clear and relatively precise enabling resolution nor UN control of these operations, undermine the constitutionality of the resolutions in this crucial area of UN practice. Nevertheless, as the number of precedents increase, the line between illegality and legality will be crossed.

The establishment of a network of rights and obligations, or the resort to legal arguments can be useful for the protection or enhancement of a position. Policy makers use law as a way of pulling pressure on an opponent by mobilising international support behind the legal rules invoked. Policy oriented law is, by now, in accepted Orthodoxy in the US; legal norms can often be stretched to fit the policy objectives of a decision maker. Law is no doubt, a major force in international relations and a major determinant in national policy. Law is an integral part of the international political process and cannot be adequately evaluated outside of the context of this process. The nature of law is interpreted as a dependent of the nature of international politics; not

to be strained in the exercise of their functions. Neither can it be understood or properly practiced without regard to the other. Law reflects faithfully and cruelly the essence and logic of international politics. It is not expected to abolish international politics, prevail over 'politics, or be subservient to it. It is therefore necessary to examine law within its political context.

Interaction between law and politics is influenced by the international environment. It establishes channels through which states may achieve tentative accommodation between their simultaneous urges for freedom of action based on notions of sovereignty. It requires here a subordination of the politics of particular nations to the needs of world legal order, although recognising that reconciliation of national and world perspectives is one of the prime factors in improving the global system, as well as in altering the historically sanctioned possession over military capacity by powerful nations.²⁰

There is no authoritative judicial body that has power to identify the rules accepted by states, record the substantive precepts reached, interpret when and how the rules apply, and identify violations. Even the World Court does not have the power to perform these functions without states' consent. Suffice it to say that no centralized enforcement procedures exists, and compliance is voluntary. Consequently, states themselves not a higher authority, determine what the rules are, when they apply, and how they should be enforced. This raises the question: When everyone is above the law, is anyone ruled by it?

An effective legal system must represent the norms shared by those it governs. Yet the contemporary international order is culturally and ideologically pluralistic and lacks consensus on common values. Although some claim that the Western-based international legal order approximates universality, state practice and the simultaneous operation often incompatible legal traditions throughout the world contradict this claim.²¹ As in any legal system, in international politics, the legal thing to do is not necessarily the moral thing to do. In fact, international law legitimizes the drive for hegemony and contributes to conflict.²² By accepting the view that the

²⁰ Finnegan, R.B. Junn, R.S. & Wilson, c.E. et al (1979) *Law and Politics in the International System: Case studies in conflict resolution* (University Press of America Inc.).

²¹ Bozeman, Adda B. (1994) *Politics and Culture in International History* (New Brunswick. N.J. Transaction) see Millerson, Rein (1994) *International Law, Rights and Politics* (London and New York: LSE/Routledge) see Khan, L. Ali (1996) *The Extinction of Nation States – A World Without Borders* (Dordrecht: Martinus, Nijhoff).

²² Lissityn, O.J. (1963) "International Law in a Divided World" (*International Conciliation*) 542:3-69. see Whitton, J.B. (1971) "Hostile International Protaganda and International Law" in *American Academy of Political and social Science Annals*. 398:14-26.

unbridled autonomy of sovereign independence is sacrosanct, international law follows the realists “Iron law of politics-that legal obligations must yield to the national interest.”²³

In a voluntary consent system, the rules are those that serve their interests. These rules therefore preserve the existing hierarchy. Enforcement is left “to the vicissitudes of the distribution of power between the violator of the law and the victim of the violation”.²⁴ Therefore, the political scientist, Hans J. Morgenthau concedes, “it makes it easy for the strong both to violate the law and to enforce it, and consequently puts the rights of the weak in jeopardy.”²⁵ A great power, for instance, can violate the rights of a small nation without having to fear effective sanctions on the latter’s part. According to Hoffman, international law is also often a justification of existing practices. Hence when a type of behaviour occurs, frequently, it becomes legal.

The vague, elastic working of international law makes it easy for states to define and interpret almost any action as legitimate. As Samuel S.K. has observed, “the problem here is the lack of clarity and coherence that enables international law to be easily stretched, to be a flexible fig leaf or a propaganda instrument”.²⁶ This ambivalence makes it possible for states to exploit international law to get what they can and to justify what they have obtained.²⁷ Above all, critics conclude that international law is least developed in the state system's most critical realm: where national security is at stake when the threat of armed conflict arises.

Legal norms enter into decision making less as criteria to determine what substantially, governments should or should not do, than as sets of principles that can be put together into a case to justify actions that have already been taken. In this sense, legal norms thus become diplomatic capabilities; governments fabricate legal justifications for their decisions and actions in order to mobilize domestic and external support. The American experience in the 1962 Cuban Missile crisis reveals, for instance, that there is little evidence showing that the decision as it was

²³ Morgenthau, Hans J. (1995) *Politics Among Nations* (6th ed. Revised by Kenneth W. Thompson, New York).

²⁴ Friedheim, R.L. (1965) “The ‘Satisfied’ and ‘Dissatisfied’ States negotiate International Law”. *World Politics* 18:20-41 see Niemeyer Gerheart (1941) *Law without Force: The Function of Politics in International Law* (Princeton Univ. Press). See Briggs, D.A. (1995) “The Amorality of Power Politics: A case study of the UN Peace Mission in Somalia” *Nigeria Forum NJIA Nigeria* vol. 15, Nos 1-2. pp. 23-32.

²⁵ Morgenthau Op. Cit. (1985).

²⁶ Hoffman, S. (1971) “International Law and The control of Force” in Karl W. Deutsch and Stanley Hoffman (eds) *The Relevance of International Law* (Garden City N.Y: Double-day-Anchor).

²⁷ Samuel, S.K. (1991) “Intervention under International law” *Pakistan Horizon*. 24: 98-102 see “Rules of the Game in International Politics” in *Int’l Studies Quarterly*, 24, March (1980).

being made, was seriously debated on legal grounds. Similarly, during various crises over Berlin, the confrontation between Malaysia and Indonesia in the mid-1960s, and the Turkish invasion of Cyprus in 1974, law was used primarily to establish the legitimacy of diplomatic positions; and mobilize diplomatic and public support for each party's own position, while attempting to demonstrate that the opposition policies or actions were legitimate. On the other hand, in crisis situations, law assumes different functions: it is used primarily for mobilizing support at home and abroad rather than establishing limits on what can or should be done. But the international concern for human suffering can be sufficient ground to support the legality of sanctions against guilty state.²⁸

Historically, the function of UN peacekeeping was to observe truce agreement and police the disengagement of warring parties.²⁹ A basic prerequisite of these operations was that it required the consent of the parties concerned. Most of the conflicts on the UN agenda were those fought between states. Today the international community is also expected to intervene in internal conflicts, either to make peace between contending parties and preserve national and regional peace and security or to put an end to human rights abuses and mitigate a humanitarian tragedy. Questions of why, how and when to intervene are presenting major dilemmas for the international community. The Security Council and UN's pattern of behaviour and its massive interventions in Iraq, Somalia, Cambodia and Bosnia have produced new and problematic grey areas between peacekeeping and peace enforcement which can lead to tragic consequences and cause immense difficulties to officers in the field. What should be our attitude to humanitarian intervention?

What developing countries of Africa should try to ensure is that the UN system is not used selectively in controlling them; if this happens the SC may end up becoming a mere rubber stamping body with countries singled out (rightly or wrongly) for reprimand and retribution by the powerful nations and subjected to international action. The powerless countries will thus be left without genuine and effective recourse to justice. The developing countries of the world should make sure that a meaningful redefinition of the world political system is based on the

²⁸ Wright, Quincy (1953) "Law and Politics in the World Community" in George Lipsky (ed.) *Law and Politics in the World Community* (Berkeley University of California Press) pp. 3-15.

²⁹ Hale, W. & Kienle, e. (ed.) (1997) *After the Cold War. Security and Democracy in Africa and Asia* (I.B. Tauris & Co. Ltd. London).

principles of justice and international law, instead of political expediency. As people differentiate between international pretences and true motivations, the respect of policy makers for human rights and other principles will grow. Similarly, there will have to be some agreement about relief in cases where humanitarian action is held to infringe on national sovereignty. Moreover, the UN is no more than its components parts, and cannot initiate policies against the wishes of any of the five permanent members of the SC. Nevertheless this power of veto cannot prevent discussion of important issues. But the Security Council resolutions to impose arms embargoes on Yugoslavia over ethnic violence recently ran into a hitch sequel to Russian's position on the matter.³⁰

Without approval, the UN is imposing its policy through peace enforcement. The means to achieve that consent, the relationship between consent and the UN's competence in establishing new missions and the legal limitations upon the organization deriving from consent raise important questions for the new peacekeeping, as they did for the old. The likelihood that second - generation peacekeeping operations will address conflicts with a strong internal dimension, even if they also involve international disputes, means that the signatories to settlements, in good faith, (*pacta sunt servanda*) will include non-state actors, whose centrality to the process of conflict resolution is now an axiom of international relations and law.³¹ Armed intervention in a humanitarian tragedy in my view should be exercised with maximum caution and restraint having exhausted all other possibilities before using this option. In essence, the UN and regional organisations must develop guidelines specifying when and how they would become engaged and what kind of instruments they may use - diplomatic, economic, humanitarian and military.

Two of the formerly ideologically opposed super powers have rediscovered the UN. There is now no need for the other 193 members to take refuge in contending lobbies. Is, the UN as a "thing in itself" able to carry aloft triumphantly and tirelessly the principles of the Charter? Or is the UN merely the sum of 185 parts? If it is the former, its conscience and will power may ultimately transcend divisive state interests. If it is the latter, the disparate characteristics and

³⁰ Macrae, Joanna and Zwi: Anthony with Duffield, Mark and Slim Hugo (1994) *War and Hunger: Rethinking International Responses to Complex Emergencies* (Zed Books Ltd. London). See Harriss, J. ed. (1995) *The Politics of humanitarian Intervention* (London: Pinter).

³¹ Ogun Broadcasting Corporation News (1998).

interests of 195 members will be a potential for continued disunity. How does the UN deal with its sovereign state members? Which issues generate most controversy?

Objectives

Imperfect as it is, politics reflects the reality of the human condition: high ideals compromised by what is achievable. A leader may be prepared to risk domestic political capital in the service of foreign policy imperatives. We have witnessed slow disintegration of the American purpose. The central-issue in today's widely ranging but still jumbled debate about sanctions involves its interaction with international politics and/or foreign policy. Lack of or weak political will coupled with an entrenched strategic manoeuvring involved in sanctions policy of states are crucial to our discussion and analysis in this article. More significantly, as international relations theorists have often noted, a consideration of the behaviour of international actors would most frequently suggest the predominance of interests in explaining their actions with the discourse of ideas serving primarily as justification for the pursuit of those interests. For Nigeria, the sanctions are symbolic and might prevent their vying for the UN permanent seat – a move diplomats say the US is working hard to prevent by encouraging South Africa to run instead as an African candidate. Nigeria deserves a position or seat in the global body's most powerful arm (UNSC) in view of its prominent roles in global politics. The sanctions which became effective in 1995 required all states to reduce the number of lined up international backing for Nigerian diplomatic personnel on their territory and to restrict the entry/transit of Nigeria government officials. Nigeria did not fulfil the requirements to end the embargoes imposed after it was accused of human rights abuse between 1993 and 1998. these domestic problems and pre-occupation define the limit of expectations, the range of possibilities and the nature of leverages and constraints in the hands of those engaged in the conduct of foreign policy. Also is the transparent reality of the whirlwind of democratization which has since 1989 been contributing positively and fundamentally, towards modifying the political tune, issue and content and policy agenda of world politics.

In addressing the international politics of sanctions, this study is (also) concerned with the processes by which inter-state agreement on sanctions are negotiated; the rules and regimes established to facilitate cooperation; the international institutions that have been, or need to be,

created to implement those rules; and the conflicting political forces on whose resolution any successful regional or global sanctions initiatives must depend. Sanctions have been followed in due course by skeptical reassessments of supposedly sacred assumptions and reshaped policy makers' perceptions of world politics and the policy programmes to best preserve world order.³² In considering this argument we shall give it the benefit of every doubt concerning the facts of the international system. We shall take it that neither Article 16 of the covenant of the League of Nations nor Chapter VII of the UN Charter introduced into international law anything which can be equated with the sanctions of municipal law. In spite of the Korean War and of whatever moral may be drawn from the Suez incident, we shall suppose that, whenever their use is of importance, the law enforcement provisions of the Charter are likely to be paralysed by the veto and must be said to exist only on paper.³³ Unfortunately too, the UN is not an autonomous organisation whose boss has at his beck and call the troops needed to impose law and order in unruly parts of the world. It is rather the servant of its members especially the five countries with permanent seats on the Security Council.

Management

The dramatic transformation in international politics that has occurred since the late 1980s has created an imperative for critical re-examination. However, we are not interested in querying the fact of this transformation – of course, it is obvious. The end of the Cold War presents the third opportunity of the twentieth century to create a reliable security system. the pragmatic first generation operations tended to have one mandate that scarcely changes overtime and the new world order is a fluid phenomenon which is inherently mercurial and versatile though no longer in its infancy, with the long-term prognosis still far from being clear.³⁴

³² Kegley, Jr. C.W. and Wittkopf, E.R. (1997) *World Politics: Trend and Transformation* (6th ed.) (St. Martin, Press, New York) see Northedge, F.S. (1970) *Order and the system of International Politics*, Lecture Series No. 2 NIIA Lagos see Henkin, Louis (1968) *How Nations Behave* (New York: Praeger) p. 252.

³³ Hart, H.L.A. (1991) *the Concept of Law* (Clarendon Press: Oxford) see Hoffman, S. (1971) "Intervention under International Law" *Pakistan Horizon*. 24:98-102 see Mayall, J. ed. (1996) *The New Interventionism – 1991 – 1994 – United Nations experience in Cambodia, Former Yugoslavia and Somalia* (Cambridge University Press).

³⁴ Slater, R.O. et al (1993) Op. cit see also Heater, Derck & Berridge, G.R. (1993) *Introduction to International Politics* (Harvester wheat-Sheaf, New York) see Holsti, K.J. (1992) "Power Capability and influence in international Politics" in the *Global Agenda: Issues and Perspectives* ed. By Kegley, C. and Whittkopf, E. pp. 9-21 (New York: McGraw-Hill).

Major powers were standing tall in their determination to use their resources and will to lead others in a campaign to reinvigorate civilization. Collaboration, trust, tolerance and international law would replace unilateral selfishness, deceit, violation of human rights and lawlessness in the attempt to will the peace. Yet one wonders whether the paramountcy the Big Five is not a conventional system of power politics thinly disguised. In the interest of world peace, would member states be prepared to give up any of their precious sovereignty? Could the new UN have sufficient authority to compel members to accept decisions? If big power leadership were said to be vital to secure world peace, would the smaller nations be ready to go along with that? If the strength of a State's autonomy were acknowledged, would this reinforce collective potential or would it weaken it?

The rapid development of new means of communications, being the inevitable concomitant of economic and technological progress, further accelerated the dissemination of human rights ideas. Similarly, international issues increasingly penetrate the thinning veil of state sovereignty. Human rights is one of the issues constantly moving between the international system and the domestic affairs of states, affecting interstate relations and influencing internal developments, having a stabilizing or destabilizing effect.

The recent upsurge in intra-state conflicts can be traced to the end of the Cold War and the emergence of a new world order. With the end of the Cold War, the two War, inter-state conflicts were common leeway to operate. But after 1991, emphasis started to be placed on a new world order that is predicated on democratization and defence of human rights. African leaders who had dictatorial tendencies therefore started running into trouble. Hence from a survey of the prevailing views on the fate of the world organization, it is obvious that it has to jettisoned or at least modified, its non-intervention provision in a way to allow effective multilateral resolution of various conflicts around the world². Nobody should be able to hide behind the issue of sovereignty. Events in the Democratic Republic of the Congo, for instance, had shown that instability in one country could have repercussions across the world. All said and done, we cannot say that if something goes wrong in one part of the world that because of the

² The Guardian May 28, 1988 p 15 see also "Nigeria Accuses US of Rights Abuse", in *The Weekend Austrian*, 11-12 Nov. 1995. See Evans P. et al eds (1993). *Double-Edge Diplomacy*(Berkeley and Los Angeles: University of California press) see also text f the broadcast by the Head of State, commander-in-chief of the armed forces of the federal republic of Nigeria. General Sani Abacha, GCON, Commemorating the 4th Anniversary of the Administration of November 17, 1997. The Guardian (Lagos) November 17, 1997 p. 7

doctrine of national sovereignty it is domestic affairs³. We should be able to say we are concerned. But this argument is less than clear and least convincing.

Moreover, there has been a change in public opinion in much of the world regarding the balance between respect for state sovereignty and humanitarian demands so that as the former Secretary-General of the UN, Javier Perez de Cuellar has said:

*We are witnessing what is probably an irreversible shift in public attitudes towards the oppressed in the name of morality which should prevail over frontiers and legal documents*⁴.

It is therefore, no longer tenable to assert that whenever a government massacres its own people or a state collapses into anarchy, international law forbids military intervention altogether. The durability of these debates provides a clue to their resolution. The internal affairs of a nation used to be off limits to the World Community; now the principle of humanitarian intervention is gaining acceptance; power politics within such systems will necessarily consist of efforts to manipulate others to satisfy self-regarding interests⁵. Similarly, a snapshot of law and politics shows both the fluidity of attempting to consider legal problems without examining political processes and the insight gained when the two are brought together.

For the sake of convenience the functions of the UN in the field of the maintenance of Peace and Security can be classified into three broad categories of activities:

1. The political role of UN organs in the peaceful settlement of disputes (chapter VI of the Charter- entitled “peaceful settlement of disputes.”
2. The enforcement action which can be taken under Chapter VII dealing with “action with respect to threats to the peace, breaches of the peace, and acts of aggression”.
3. The peculiar institution of UN “peacekeeping” operations which have no explicit legal basis in the Charter, but have developed in practice and are often described as being based upon “chapter VI and a half”.

³ Gordenker, L. (1987). Refugees in international politics (Routledge: London) see I. Brownlie in Moore cit, N. Ronziti (1985). *Rescuing Nationals Aboard through Military Coercion and Intervention on Grounds of Humanity (Dordrecht)*.

⁴ Quoted in Ibid (1987) and also James A. (1990) peacekeeping in international politics (London: Macmillan) Peterson, M.J. (1986). *The General Assembly in World Politics* (Boston: Allen & Unwin) see Miller, Lynn H. (1985) *Global Order Values and Power in Int'l policies* (Boulder, Colo: Westview press).

⁵ Lamborn, A.C. (1997) “theory and the policies in “world politics” *International Studies Quarterly*, 41:187-214. See Reisman, W. Michael & James E. (1992) *Regulating Convert Action practices, contexts and politics coercion Abroad in international and American Law* (new haven: Yale university press).

The difficulty remains, however, that the SC has frequently refrained from clearly indicating upon which Articles of the charter its decisions are based. The General Assembly (GA) may make recommendations and appoint fact finding missions; states are under no legal obligation to comply with such recommendations or to cooperate with fact finding missions, although General Assembly recommendations often exercise great political influence.

The functions of the Security Council and General Assembly in connections with the settlement of disputes represent a mixture of good offices, mediation, inquiry and conciliation. But the security council and the general assembly are not, and were never intended to be, judicial bodies even though they take legal factors into account, political considerations often overshadow legal considerations in their deliberations. Moreover, members of the security council and the general assembly are not always impartial. In view of these factors, the absence of a power to take binding decisions should be regarded as a necessary safeguard for member states, and not as a defect in the system. The monopoly in enforcement power was made subject only to two exceptions: first, the unilateral or collective right of self-defence in article 51, and, second, enforcement measures by regional organizations authorized by the security council under article 53. The security council would feel morally obliged to take enforcement actions against states which disobeyed an order, and they are reluctant to take enforcement action against states which are their own allies or protégés.

There is also much doubt as to the general effectiveness of economic sanctions in view of past experience which indicates that they have more political and symbolic importance than real effects. A number of states tried to obtain compensation under this Article 42 for damage which they or their companies incurred by adhering to the UN sanctions imposed upon Iraq. But these efforts remained fruitless. This may be a bad precedent for the future willingness of states to follow sanctions of the UN. But under traditional international law, the Haitian case is a strange case because it has never previously been the practice to regard the overthrow of a democratic government by a military coup as a matter of international concern in terms of Chapter VII of the Charter. Indeed, we have seen that there is a tendency in the practice of the SC to relate internal conflicts and especially

human rights violations to international peace and security. If there are trans boundary effects of a human emergency, such as a large exodus of refugees, or other external aspects which threaten international peace and security and determined as such under Article 39 by the SC, the case for applying forceful collective measures would seem even stronger. The establishment of internal freedom democracy and respect for human rights (in the Western sense) are the only morally defensive foundation of international law. The question is to what extent the collective security systems as envisaged by the drafters of the charter has really been revitalized, or whether this practice is actually something different, namely the use of the umbrella of the UN by western powers, foremost which is the US, for operations conducted under their own command and control and for interests of their own.

Atkins, for instance, gave the strong impression that they regarded the EU as the key player, and that if stronger (tougher) sanctions were initiated by the EU, they would follow. However, it is easy to suggest this when it is not likely, and cast them in a favourably light as willing to take tougher measures if others do. Also the multilateral argument is convenient in a situation where there is neither the will nor the support for tougher unilateral actions.⁶

Being a political organization, the UN activities are subject to the will of the political majority, and in the case of the SC, the permanent membership. The fact that the SC has a smaller membership, with a privilege sub-ground within it, means that the political influences within it are different from those operating on the plenary body, the General Assembly (GA). During the first decade of the UN's life, for example, the organization as a whole was dominated by the West. This domination was felt in the Assembly's powers in the field of peace and security by, for example, the Uniting for Peace Resolution. The western majority wished to expand the subsidiary role of the assembly during the first ten years because the executive organ, the SC, was hamstrung by the soviet union, in the minority in both organs using its veto. But the Assembly could not possess the same powers as the SC. In particular the SC it had no power to enforce the will of the world community through the use of mandatory sanctions, and it had limited capacity, without the consent of the permanent members, to take military action. There was another provision of the Charter that attempted to put the interests of individual states above those of the collectivity. Article 2(7) attempted

⁶ Macrae, et al (1994) op.cit.

to embed the principle of sovereignty in the UN, under the guise of removing from the purview of the UN, matters which were within the ‘domestic jurisdiction of any state’ except when the SC was considering the application of enforcement measures under chapter VII. A very narrow reading of this provision would mean that all internal matters would be beyond the purview of the SC, the GA, or the secretary general unless the SC was utilizing its enforcement powers under chapter VII.

Enforcement action is covered under the collective security provisions of chapter VII of the UN charter, especially the non-military sanctions provided in Article 41 and the military sanctions provided in Article 42. Some analysis consider that Charter’s conditions for military enforcement have never been met, because of the failure to set up UN force under the Military staff Committee (Articles 43-47), but most would agree that the Korean and the Gulf War constitute the only examples of UN military enforcement.⁷

More than at any other time in its history the UN, is faced with the challenge of providing an effective, parallel restraining influence on the hegemony of a single superpower; and the creation of a peaceful, just and fair world. These demands on the independence and integrity of the UN have led to calls for major reform in its institutional and juridical framework to enable it to rise above politics in sanctions issues. Not only are some of the very powerful economic players of this age, Germany and Japan that were excluded from the UNSC by their defeat in the second world war, now clamoring for permanent seats but the emerging regional powers like Nigeria, south Africa, and India are voicing the equitable need to have regional representation on the permanent membership of the council. The dictates of regional balance, social justice and equity in the international system strongly support these currents if the 21st century world is to be built on equitable, secure and sustainable foundation.⁸

Article 41 of Chapter VII of the UN Charter reads:

The SC 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 UN to apply

⁷Okunade, Bayo (1995) Washington fieldtrip

⁸ Klare, M.T. (1994) *peace world security studies* (Lynne Rienner publishers: Boulder & London) see kummel, G. (1994) “UN overstretch: A German perspective” *international peace keeping journal vol. 1, No 2.*

such measures. These may includes the complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic radio, and other means of communication.⁹

The powers contained in Article 41 were intended to allow for the imposition of mandatory enforcement measures following a finding of a ‘threat to the peace’ breach of the peace’ or ‘act of agreesion’ by the SC under article 39. However, on many occasion, the council has been unwilling to take mandatory action with the consequence that it has settled for a call for voluntary measures or sanctions. Although the Charter base for such powers is inconclusive there is no doubt that the council has developed such a power, the evolution of which lies in political compromise. Voluntary sanctions, as the term implies, are breached with impunity and so are relatively ineffective except for a certain symbolic role.

Human rights, when denied to people can be a source of internal or international conflict- just think of the millions of refugees who have to leave their homes due to ethnic and religious strife¹⁰. Although, the focus is more on compliance, it reflects our concern at the humanitarian angle.

It can be seen that although there has been a proliferation of the institutional machinery for attempted human rights protection under the auspices of the UN, the bodies established all have significant weaknesses, in particular, the lack of any mandatory and enforcement powers which would enable us to speak of human rights in fuller sense. In reality the only occasions in which human rights standard have been enforced by the international community is when coercive measures have been applied under the collective security umbrella; for example the imposition of sanctions against southern Rhodesia where denial of self-determination constituted a threat to international peace. Where there is sufficient collective will serious and wide scale abuses of human rights can contribute to threat to the peace and so be dealt with under collective security powers of the organizations. Nevertheless, considering the limited coverage of human rights in the UN charter, the development of standard setting and supervision, and the fact that many states are at least called to account for some of their human rights practices, is a remarkable achievement for the world organization.

⁹ The post express June 29, 1998. See Banjo ‘Wale Segun (1998) *The united nations fact finding mission in Nigeria* African Research Bureau Monograph series vol. 1 No 1, No.3 AFREB publishers.

¹⁰ Op. cit. (1994).

However, despite the flawed nature of human rights, and the imperfect protection afforded, there is little doubt that the development and application of human rights standards has reduced though by no means eliminated oppression. Turning to a comparison of the effectiveness of universal and regional organizations in this area, it can be seen that unlike the collective security system, which is dominated by the UN, there is much greater regional input into the promotion and protection of human rights. This is partly explained by the fact that regional organizations can probably put greater pressure to bear on recalcitrant states. The UN has made the greatest inroads into universalizing members of regional organizations with human rights components. Regional organizations would simply be a series of isolated regional legal systems each with its own sometimes widely differing approaches to the protection of human rights.

Sanctions suffer from politicization with the end result often being a compromise, which is not sufficient to achieve the objective of preventing further human rights abuses or damages. Although UN has attempted to set universal standards in this area, political compromises necessary for consensus have resulted in unclear and weak ‘soft’ sanctions.¹¹ Sanctionable issues require a clear and effective lead from the global organization. Nevertheless, despite these deficiencies in institutional competence, human rights protection is much higher on the agenda of universal, regional and even trade organizations. It is to be hoped that this development is not too late.

The purposes of the UN according to Article (1) of the UN Charter are: to maintain international peace security to develop friendly relationship among nations. To achieve international cooperation in solving problems, and to act as a centre for harmonizing collective action. Action-loaded as these purposes are they only bear fruit if collective measures are appropriate and effective.¹² Basically, the UN is to serve three interrelated functions. Namely, to be a forum for discussion and decision, to meet as a syndicate for action, employing non-forcible measures to improve the world, and to be a missionary centre appealing to moral values and standards higher than those generally prevailing in international relations.

In the interlocked international relations of the contemporary world, any crisis becomes everybody’s crisis. The aim is to address security individually and collectively. But the questions are: How best may an international organization intervene thousands of the UN exceed its

¹¹ *Development and Cooperation* D + C: (2/98).

¹² Finnegan, R.B. et al (1979) Op. cit.

authority as impartial conciliator? Has security any real meaning if it is impermanent and imprecise? Does the proposed reforms appeal to the protective instincts of well-endowed states. The points, according to Whittaker, however, is well made even if the main economic cleavage these days is between an affluent North and a disadvantage south. But sanctions enforcement is difficult, possibly counter productive; more so because of UN's exposition to fluid domestic politics.¹³

Enforcement from UN headquarters may be exercised by a system of sanctions leveled to induced settlement or force compliance with objectives already decided by the UN. Complete or partial embargoes on goods transport and services materially affected south Africa particularly in 1977 and 1984. This may well have helped to bring an end to the noxious creed to apartheid. Iraq was heavily penalized in this way in 1990 and Yugoslavia denied arms from abroad. In 1992 sanctions were imposed on Somalia, Libya and Cambodia. Yet, sanctions raise questions. Are sanctions levied against a whole population fair? Do they not provide a focus for resentment and stiffened resolve when harm to vulnerable civilians is clear? Moreover, sanctions bursting is a very profitable and dishonorable trade. How far can it be controlled?

In rather different ways the Korean and gulf operations were strategies thrusts to restore a status quo which was held to guarantee stability within a region. In the case of Korea, an anticommunist salient had to be rescued from attack. In the Gulf crisis, a vital part of the world's oil supplies appeared imperiled. An element of power-gaining in both instances seems to have little to do with the implementation of UN Charter principles. Certain aspects of these operations raise controversial and uncomfortable issues. The immediate objective of stopping the fighting and blocking further aggression was achieved. Peace was enforced but in its fullest sense, that is to help people feel secure and representatively governed, peace was never effected. The gulf saw the conflict blasted into cease-fire and armistice but with no end to Saddam Hussein's dictatorial arrogance and the destabilizing behaviors of Iraq. The questions remain. Why was the UN sidelined with so little exploration of a range of settlement possibilities? Was there no prospect of sanctions system being applied? The exigencies of the Cold War forced the peace over Korea

¹³ Whitaker, D.J. (1997) *United Nations in the Contemporary World* (Routledge, london and New York) see Magstdt, Thomas M. & Schotten (1993) *Understanding politics, ideas, institutions and issues* (St. martins press, Inc, New York) see Simma, Bruno (1995) *The Charter of the United Nation: A commentary* (oxford: Clarendon press). See Ebo. F.A. (1994) "collective security as selective security. The dilemma of the UN in a New World Order" *ECPER journal for political and economic studies* vol. 11, No. 2 pp. 87-102.

and made it unlikely that the US, determined to 'contain' communist expansion would wait lamely for cumbersome UN procedures requiring objectivity law and restraint.

In the case of the Gulf, there was an urge to pre-empt any turbulence threat to assured oil supplies. Do sanctions in these instances become prisoner of political expediency? The attempt of enforcement in Somalia raises a number of demanding issues. What were the long-term objectives as distinct from immediate holding of the ring? Were the rules of engagement in this pacification and relief exercise too imprecise, perhaps too forceful eventually? Is there a point at which frustration and retaliatory instincts lead to peace-keepers crossing the threshold of violence? Should a termination date have been fixed using criteria of success and failure (if it is possible to establish these)? The anguish of this experience has taught the world a great deal about the possibilities and limitations of sanctions. Sanctions were levied by the SC against aggressor Serbs and an arms embargo imposed. Negotiations by UN mediators and others did not prevent stage-by-stage takeover of territory and the forced eviction of these regarded as ethnically impure. Targeting of civilians rendered the objective of protection an empty concept. Predictably, this tore away the impartiality posture of the UN, and it enraged, particularly, the Serbs. Social and economic rehabilitation and the resettlement of refugees was to follow. How best can states as members of the UN meet the challenges of the changing international environment? Further, is there any prospect of alleviation by responsible internal authorities? The contemporary world is dramatically one of violence and gross human disparities. Nevertheless, the chances of former adversaries and political partisans working together as partners have never been greater since the early 1990s swept away so much of the enmity of the Cold War epoch. The need now is for nations united in purpose to translate intentions and priorities into action.

In practice, of course, the UN is a melting pot where feelings of complementarity of interests. Purposes and needs are vaguely and variously interpreted. Member nations are diverse in their political and ideological orientations in the roles they feel called upon to play, and in their historical and contemporary experiences. Coming to the UN building in New York are representatives of democracies, autocratic regimes, revolutionaries, would be liberators, religious fundamentalists, the poor and the proud.

The Dynamics

The efforts of the US to crack down on the Abacha military junta for violations of human rights were complicating its other policy goals in Nigeria. First, on the politics of sanctions and its nexus with oil business- signifying the interplay of economics and politics in the world arena. In the most general sense, the ‘economy’ can be defined as the system of producing, distributing and using wealth; whereas politics has to do with the set of institutions and rules by which social and economic interactions are governed. For our own purposes it refers primarily to the economic basis of political actions i.e. the ways in which economic forces mould governmental policies. In other words, sanctions are eminently political and politics is obviously tied to the sanctions phenomena. Krasner identifies four (4) principal goals of state action: political power, aggregate national income, economic growth and social stability.¹⁴

In the same vein, having come to office pledging to get tough with dictators “from Baghdad to Beijing “ Mr. Clinton has found getting tough the China on human rights much harder than he had imagined. An early attempt to link China’s trade privileges with improvements in its observance of human rights was abandoned under pressure from American community. But it is not just vulgar commerce that is leading the Clinton team to play down human right. The threat of military conflict with China over Taiwan has emphasized to the Americans how high the stakes are and caused them to redouble their efforts to get to say that it is easy to posture about human rights, much harder to do anything about it. This leads to the second perennial questions: how does human rights fit with other foreign policy concerns? It is true that America has previously been willing to identify itself with repressive governments! Trade sanctions against south Africa showed that there were non-military tools for pushing human rights abroad. The west’s apparent failure to make much progress in pushing human rights in China has dented some confidence in the spread of democracy.

In an attempt to create a “global village” of diminished borders to develop global coherence while maintaining local or national diversity, the future though, brighter, remains uncertain and fluid. The conclusion of the Cold War may have made things possible which

¹⁴ Krasner, Quoted in Frieden, J.A. and Lake, D.A. (1987) *International political economy perspectives on global power and wealth* see Odell Peter (1983) *oil and world power* (New York: penguin) see Vernon, Raymond (1976) ed: *The Oil crisis. American Academy of Arts and sciences USA*). See Gelb. L.H. (1983) oil-X in a strategic Equation” in New York Times.

many once though impossible: and that is critically important. Social science has always been better equipped to predict continuity than change; “turbulent fields” do not play to the predictive strengths of the contemporary social sciences.¹⁵

Sanctions always have an underlying political character. First and this will be true of all sanctions activities- those states that authorize and in one way or another, contribute to it will do so because they hope that it will advance certain goals. Second, they may have agendas of their own, and find themselves able to use their position to advance them. Third, they may have an impact on the local political balance. Hence because the dominating political purposes are not shared by all the interested actors, they create much controversy (interplay between the mutual and the conflicting interests of states). They see power rather than principle as the driving force of international affairs. As Kissinger, once asserted:

“constructing a working relationship with the Chinese in the interests of maintaining a balance of power is more important than pressing for changes in the country’s human rights policy”.

But there is a limit to indifference – purging foreign policy of all sentimentality. By way of laying the foundation for a realist explanation to sanctions in international politics, the realities of interdependence dictate that the ability of governments to pursue domestic policies effectively is influenced and constrained by developments in the international system. It is equally evident that the realization of international objectives depends meaningfully on domestic politics and economics. Our analysis is embedded within the Realist tradition in the belief that international anarchy and the pursuit of national power are central to understanding both politics of sanctions and law- the multidimensional nature of state action and to develop its logic in a rigorous fashion.¹⁶

The legal complexities of sanctions are many. Although their details do not fall within the scope of this study, one issue has to be clearly established as a basis for the reasoning that follows:

¹⁵ Cox, R.W. (1981) “social forces, states and world order: Beyond international theory. *Journal of international studies* Vol. 10, No 2:108-111

¹⁶ Livingstone, Quarterly vol. 36 No 3) see Baylies, C. (1995) “political conditionality and democratization, *review of African political economy* 22 (65):321-338.

1. There would seem to be an effective sanctions of self-interest in limiting too extensive a resort to coercion.
2. The measures were also in complete conformity with the economic interests of the states applying them.
3. Identifications of the standards of customary international law according to which the legality of the measures in question are to be tested requires a detailed scrutiny of state practice in the matter of the political uses of sanctions (embargoes).
4. The oil measures taken by the Arab states in 1973 were the result of the exercise of their “sovereign rights” to dispose of their natural resources in the manner which best suits their legitimate interests.¹⁷

The resolution expressed by the principle of state sovereignty have proved to be remarkably durable. State, it is often observed, have not disappeared. Problems or inequality consequently remain with us also, have to be grasped in relation to global processes that nevertheless seem to elude even or perhaps especially the most holistic and totalizing categories of analyst.¹⁸

To rescue international law from the realm of disembodied legal essences and to relate it to the world we live in, we do believe that the approach we have chosen has theoretical priority-the role of international law in international politics and the political constraints on the scope and substance of international law-the interlocking patterns of international politics and the political constraints on the scope and substance of international law the interlocking patterns of international politics and law, relating the norms of international law of their political foundations from an illuminating perspective, international law as a broad and effective pattern of universal law, even though, in another sense, it was the international law of Europe-international politics largely is the product of European international relations.¹⁹

Defining “humanitarian circumstances” was a political more than a legal matter and determination would have to be made on a case-by-case basis, with any problems arising in that

¹⁷ Falk, Richard Krato Chwill and Mendlovitz S.H. ed (1985) *international law: A contemporary perspective* (west view press Inc.) see cohen, Raymond, (1981) *international policies the rules of the game* (new york and London Longman) also Levi. W. (1976) *law and politics in the international society* (Beverly Hills, Calif. Sage).

¹⁸ Walker R.B. (1993) *Inside/outside: International relations as political theory* (Cambridge University press see Wriggins, H. (1969). “political outcomes of foreign assistance: Influence, involvement or intervention” *Journal of international affairs* 22, pp. 217-30 see also Forsythe, David P. (1990) *The Politics of International Law: US foreign policy reconsidered* (Boulder, Colo: Lynn Rienner).

¹⁹ Kaplan, Morton A. & Katzenbach N. DEB (1961) *The political foundations of international law*, (New York: Wiley) see Koskennieni, M (1990) “The Politics of International Law” *EJIL*, 1, 4-32

connection being referred back to the SC—and might have an impact on the fundamental human rights of that population²⁰. Opponents of sanctions often describe them as “punitive”. This is wholly erroneous and willful misunderstanding – sanctions should be seen as “persuasive” except for the politics, as a means of bringing pressure to bear and so persuading the target of the necessity of entering into genuine negotiations. They are essential components of negotiations and not an alternative to them. We concede, however, that nations often do act in partisan ways in support of immediate political objectives.²¹

Effectiveness of sanctions depends on the position of international community and the interest of the members of the SC. For instance, the UN resolution on Israel was not effected because America has great regard for the state of Israel and has a lot to lose thereof. The resolution on Iraq on the other hand, was effect purposely because. If Iraq had remained in Kuwait it would have been detrimental to the US oil supplies. It goes to explain that resolutions are effected when they are in the best interest of members of the SC. Each country sees compliance with resolutions basically from narrow point of view. Hence international response to any violation cannot be uniform because each country views it from the perspective of what it can gain out of what she can gain out of the situation. Perhaps most intriguing of all is the relationship between the principles embodied in regimes and the interests of powerful nations. It is a truism that implementation and enforcement of sanctions is problematic because it is not self-executing.²²

However, this demonstrates the possibility and the need for moral action in a realist world though with opposite attitudes towards every political problem. “It is the eternal dispute between those who imagine the world to suit their policy and those who arrange their policy to suit the realistic of the world” The major powers talk about human right only when their interest- and not of those oppressed people- are at stake. The human rights cause is at a pivotal moment. In recent years, the major powers have shunned vigorous defense of human rights for fear of

²⁰ Bethlehem, D.L. (ed.) (1991) *The Kuwait crisis; sanctions and their economic consequences part 1 & II* (research centre for international law, university of Cambridge, Cambridge international documents series, vol. 2 – consulting editor E. Lauterpacht CBE, QC- (Grotius publications. Cambridge University press) see also Wallenstein (1983). *Economic sanctions: Ten Modern cases and three important lessons* in Nincie and P. Wallenstein (1983) (eds) *Dilemmas of Economic coercion: Sanctions in World politics* (New York: Pranger).

²¹ Ibid

²² Sutcliffe, R.B. (1969) “The Political Economy of the Rhodesian sanctions” *Journal of Common Wealth political studies* vol. 7 no 2 p 115 see Carrot F. (1975) *South west African and the United nations* Westport, Connecticut – USA. Compare Barber, James et al (1982) *The West and South Africa*. (Routledge and Kegan Paul, London).

offending trading and investment partners and have become increasingly parochial in their concerns despite the emergence of a global economy. Even in the face of genocide in Rwanda, for instance they mustered only belated humanitarian assistance.

Efforts following World War one were hampered by a combination of fatal weaknesses including among others:

- i. Distrustfulness of multilateralism as exemplified principally by the American refusal to join the league of nations;
- ii. A punitive peace that encouraged the resurgence of German militarism and the rise of Nazi totalitarianisms;
- iii. Japanese militarism and a cultural belief in destiny through conquest and
- iv. Western fear of the Marxist – Leninist challenge to capitalism and constitutional democracy.

World War Two followed by a second effort at multilateralism through the UN, this time strengthened by improved measures for collective responses to aggression and by enthusiastic American participation consistent with Washington's determination to remain a global power. The intrusion of the Cold War heightened by the Soviet Union's second nuclear achievement and the global dimensions of the East- West stand off, plunged the world into a system of competing alliances that fostered peace through threat and mutual deterrence rather than through cooperation. In each post- world-war era, therefore, circumstances encouraged a retreat to national security. The relevant combination of factors today is altogether different, offering an unprecedented, though hardly perfect opportunity to build an international security system with appropriate diplomatic and technological instruments, and with the necessary political controls (and economic limitations) to prevent a worldwide security autocracy in the military unipolar environment. The ingredients for pursuing such a goal are several²³ (sanctions not exception).

There is constant pressure to economise on force and to scale down political objectives if the price appears disproportionate. Most important is the absence of any real sense of “

²³ Slater, R.O. Schutz, B.M., Dorr S. R. et al (1993): *Global Transformation and the Third World* (Lynne Rienner publishers, Inc. USA) see Winham, Gilbert R. ed. (1988) *New Issues in International Crisis Management* (Boulder Colo: Westview press) see. Sander, David (1986) *Law making and cooperation in international politics: The idealist case Re-examined* (London: Macmillan).

community” or “mankind”. The heritage of colonialism has done much to create suspicions that principle behavior can do little to diminish.

Whatever reasons some may have, for example, to oppose the American actions in Lebanon- and there were in many cases important political reasons, yet few professional diplomats through the US were attempting to institute colonial rule thus they had to oppose it as urgently as otherwise might have been the case. A principled nation with a reputation for being principled, is less subjected to blackmail and hard bargaining techniques than a nation that continually trims corners to gain some advantages. If however the US establishes clear principles governing its policies and demonstrates that it intends to follow those principles, regardless if what that decision costs in any individual instance, the US becomes a virtual force of nature with respect to its behavior pattern and other nations will be deterred from attempting to exploit the situation to their advantage. If the US has committed itself to certain principles of actions and is willing to lose Nigerian oil rather than renege its principles. Nigeria might hesitate before backing itself into a corner. Principles that do not give promise of a durable and acceptable. Moreover, principles cannot be stir only rigid opposition rather than acceptance. Moreover, principles cannot be asserted merely as a bluff, for the bluff may be called. A weak and flabby nation, subject to the political pressures of a satisfied and toward Nigerian public will not be convincing if it attempts to take a strong international stand.

Moreover, even under the best circumstances, the commitment to principles will involved costs, for often other nations will remain unconvinced or, for reasons of their own, will feel that they cannot agree to the solution for which the principles call. The strategy of a nation cannot be divorced from the kind of political order it desires to establish. Every time the US compromises its obligations as in the failure to enforce the SC solutions on Israel’s passage through the Sucz Canal in order to avoid some immediate undesirable consequences, it demonstrates its susceptibility to blackmail and encourages further blackmail attempts. The moment principles are blurred without being replaced by new principle there is longer a clear standard to guide a policy. To attempt to enforce that right quixotically would impair American prestige and to enforce the right at great cost to other important political interests might be imprudent. However, to condone Egyptian violation of the law by, for instance, resuming economic aid or supporting Egypt’s bid for a SC seat, is to surrender a long-term interest for a temporary advantage. Patience

and moderation undoubtedly are admirable qualities in dealing with the suspicions and rebellious leaders of the new nations. But it is a disservice to them also to lead them to anticipate towards for their lawless behavior when they do not understand the long-term costs they also will have to pay if the normative standards of international law are weakened. And when the US stains its honor not fearing the costs of forthright behavior, it undermines, its most important permanent interests and betrays those of the free and democratic world for which it bears responsibility in the present period. Thus the sanctions of international law may stem either from internal motivations or from external actions. In either case, these sanctions are real. And in either case, the life of the state is a life governed, in part at least by law, rather than merely by appetite.²⁴

The core issue here is that of interest major powers will be prepared to intervene if their interests are at risk: if not, their intervention is far more problematic and certainly cannot be taken for granted. The international system faces a whole series of questions. These questions thus poses series and potentially intractable dilemmas for the states organization and individuals that constitute that system – dilemmas for the state, questions about contemporary world politics where there was choices between equally plausible and usually unwelcome alternatives.

More than that, as in Burundi neither the Tutsi nor the Hutus wish for international intervention, ought the UN to interfere? Or should it wait until for instance genocide has clearly taken place before it acts? Something far removed from genocide has gone on recently in Nigeria (secret killings kidnapping terrorism). Major powers who apply sanctions will relate “victims” or “costs” to their interests and only allow a relatively high “casualty rate” costs among their own interests when sanctions are seen to be essential to their own world influence. International pressures undoubtedly played an important part in the south Africa story but it was internal events which forced the changes that came in the first half of 1990s. Angola represents a prime case of a country where massive peace enforcement by the UN could be justified but where those with the means to make such enforcement possible i.e. the major western powers and Russia are uninterested especially during the Cold War US could not cooperate with Russian because of ideological difference.

The most important lesson to be learnt is the need for the UN, always to show boldness in execution on the ground. On the whole, the UN played a vital and successful role in Southern

²⁴ Lauterpacht, H, (1952) vol. II *Oppenheim's international law: A Treatise Peace, war and Neutrality* (London: Longmans see Oppenheim international law vol. 1, Rev. 8th ed. (1955).

Africa and after many years of steady application had the satisfaction of seeing its past endeavors bear fruit. The most obvious one yet, is that dead locks can best be broken when it suits a major power to alter its stand or policy. The end of the Cold War made it easier for the US to accept UN interventions in Central America because it no longer saw the crises there solely in terms of Moscow-backed communism against American interests.

During 1994 new evidence emerged in both Britain and the US which threw doubts on the alleged responsibility of Libya for the Lockerbie bombing: these doubts raised fundamental questions about the justifications for continued UN sanctions against Libya. During the 1990s, despite renewals of sanctions by the SC, it became increasingly plain that the case against the two Lockerbie suspects was dubious at the very least and that it would be possible to make out equally strong cases against both Syria and Iran for responsibility for the bomb. But it was in the interest of the west, and most notably the US, either to reassess the case against Libya which had taken on the nature of a vendetta or to make accusations against Syria and Iran, and so the dead lock continued. The UN, however, showed no inclination to champion the rights of Libya (admittedly an unpopular state) since this would mean a clash with the US, Britain and France, in respect of the Lockerbie case, UN compromises, which pander to the wishes of the big three western powers, have done less than justice to Libya's case and, in consequences, have damaged rather than enhanced the image of the UN.

In the case of no other international problem (the Arab-Israel case) has a solution depended so strongly upon the attitude of one power, the US, and since throughout the relevant years it has always been the most powerful nation, it is understandable that the UN has bowed to American force majeure. At one level of UN has no alternative since the combination of American power and the American veto meant that Washington would always have its way. In the 1990s however, sequel to the end of the Cold War, the situation has altered sufficiently radically for it to be possible to enforce a lasting solution; but that will only happen when the UN reasserts itself in relation to Washington and is supported in such a stand by the major European powers.

Like the economic conditionality's which they resembled, these political conditionalities could be broken down into a number of common elements. The most basic and widely shared was a concern for human rights which were in practice difficult to specify and monitor (the UN's

famous universal declaration of human rights providing, in this respect, remarkably little guidance), but which could without much controversy be regarded as encompassing freedom from the politically motivated killing, torture, imprisonment without trial and similar abuses to which many African had been subjected.²⁵

Second was a concern for ‘democracy’ characteristically conceived in western liberal terms and notably including the installation of governments freely chosen in multiparty elections. Up to a point, this requirement could be regarded in essentially technical terms, encompassing the promulgation of a constitution in which certain rights were guaranteed and essential procedures laid down; the lifting of any previous restrictions on activities such as the formation of political parties, publication of newspapers, and holding of public meetings; the holding of parliamentary and presidential elections, which in turn were subject to monitoring by international agencies; and the continued observance of democratic procedures by the regimes which were thus elected.²⁶

Third, there was a more general concern for what was often described as good government. “Good governance” programmes were characteristically most concerned with measures designed to enhance the honesty, efficiency and accountability of bureaucratic departments.

Taken together, then, political conditionalities constituted an ambitious project of reforming and reordering African states, in accordance with external models and subject to external controls. Some of the elements involved, notably the more technical requirements of good governance were incorporated into SAP negotiated with the World Bank, and were subject to the same bargaining processes as economic conditionalities. The Bank and other international institutions none the less had only a very limited competence to intervene in the domestic political management of individual states, and many of the criteria covered under political conditionality lay beyond their scope.

²⁵ Holsti, K.J. (1992) *International politics: A Framework for Analysis* ((5 & 6 eds. Englewood cliffs, N.J. Prentice-Hall) see Hoffman, S. (1981) *Duties Beyond Borders on the Limits and possibilities of Ethical International Politics* (Syracuse, NY: Syracuse University press).

²⁶ Clapham, Christopher (1996) *African and the international system: the politics of state survival* (Cambridge university press, New York) see Frieden, Jeffrey (1989) “The Economics of Intervention: American overseas investments and relations with underdeveloped areas, 1890-1950” *Comparative Studies in society & History* 10:55-80. See also Mand Elbaum, M (1994) “The reluctance to intervene” *foreign policy* 95, p. 16.

Underlying the whole issue of political conditionality, as this was pursued by western states, there was indeed a considerable elements of sleight of hand. The language of human rights, democracy and governance provided them with a discourse through which they could greatly enhance their bargaining power against African governments, and in particular gain a freedom of action which they could use either to intervene in what would previously be obligations. Whereas structural adjustment was for the most part pursued- regardless of how successful it proved to be- by international financial institutions, which had a genuine commitment to the policies, which it entailed, political conditionality was the instrument of other goals. At the broadest conceptual level, it was easy enough to assert that African states could only be preserved and strengthened by making them more accountable to the societies, which they ruled. At another level, western states also accountable to the societies, which they ruled. At another level, western states also retained interests in the continent, and sought to ensure that these would be served and not undermined by political conditionalities. There were thus significant cracks in the alliance of western powers that sought to further the new democratic agenda.

The ambivalence of the democratizing ethos was nowhere more clearly demonstrated than by the role of external monitoring. In fact, election monitors were extremely reluctant to dismiss any elections as fraudulent; and even in cases where there were considerable doubts about their validity, monitoring organizations generally phrases their reports in a manner acceptable to the government, softening evidence of fraud into references to ‘difficulties’ or ‘irregularities’ in the electoral process.²⁷

The most determined and resourceful attempt to cling to power was however, that maintained by president Mobutu in Zaire, who as the leading example in Africa of a corrupt but western- backed dictator was through under particularly strong pressure to give way to a more accountable regime.

Donors could conceivably promote democratization by seeking to strengthen independent power centres (like NGOs) in civil and political society given that domestic power relations are pre-eminent. In response to governments’ sensitivities about national sovereignty donors have generally preferred to work with neutral development associations rather than with civic

²⁷ Ibid

organizations that have explicitly political orientations. In practice, they apply political conditions selectively. In richer and large African states like Nigeria for instance, donor demands for political reform have been much more muted and leavened with pragmatic considerations of political stability. Moreover, the implementation of international political conditions has been compromised by countervailing interests and has had mixed impact. It has though assisted regime changes in Malawi and south Africa it prompted superficial reform under entrenched leaders in Kenya and Cameroon, and at least to date failed to dislodge military dictators in Zaire in Nigeria. Generally speaking therefore, international aid conditionality is generally ineffective against rich American countries where incumbent political leaders have captured domestic economic resources flows. These are often the very same countries where external political pressures are weakest because of cross-cutting western interests. Suffice it to say that political developments in Sub-Saharan Africa seem particularly susceptible to political pressure imposed by the international donors and creditors. The principal cause of Africa's wind of change is the World Bank and the donor countries who are explicitly demanding political change as a condition for further loans to Africa.²⁸

However, the immediate prospects for political democracy are largely to be explained in terms of national forces and calculations. In other words, a country's political development derives from the evolution and domestic political forces in that particular state and society. Even the most dependent regimes have their own distinctive institutional structures and political histories which propel regime change from within. Thus, the rise of pro-democracy movements in Africa can be explained in terms of internal trends such as the failure of one party and military regimes to deliver economic benefits and the rising frustrations of newly educated group at declining living standards within African civil societies.²⁹

Thus, questions have been raised, in particular with regard to the security council's notorious selectiveness.

Prof. Matti Koskeniemi from Finland for example, has asked: "Why Libya but not Israel? Why the council's positivity during most of the eight-year Iraq- war? Why has the council's reaction in African been markedly less vigorous and effective than in the gulf? Why

²⁸ Ibid

²⁹ Hale, W & Kienle, E (ed) *After the Cold War security and democracy in Africa and Asia* (I.B. Tauris & Co, Ltd. London)

the discrepancy between the council's forceful attack on Iraq (an Islamic country) and its timidity to defend the Muslims of Bosnia- Herzegovina?³⁰

The choice of targets, as well as the manner of reacting, has certainly not been automatic. The argument is made that the council has not reflected the collective interests of UN members as a whole, but only the special interests and factual predominance of the US and its western allies within the council.

Needless to say no state can be expected to act outside the limits of its national self-interest, as defined by its government. It is not legal considerations, but rather material, political and strategic interests which primarily, if not often exclusively, govern such situations.

In the final analysis, the effectiveness of the UN and indeed its sanctions depends on the willingness of member states to cooperate, and no amount of changes in the structure of the UN will guarantee its effectiveness unless member states are willing to cooperate (especially the major powers) with the UN and with one another.

More significantly, as international relations theorists have often noted, a consideration of the behavior of international actors would most frequently suggest the predominance of interests in explaining their actions, with the discourse of ideas serving primarily as justification for the pursuit of those interests.³¹ For instance, the West's encounter with African has been driven mainly by the former's effort of ensure its continued economic hegemony over the latter (At, best, "morally deficient" world order).

Trade officials from business community tend to deplore economic sanctions as being deployed in a morally arbitrary way, aiming at some countries but not at others whose politics might be considered equally reprehensive. It is logical that governments of different political persuasions are likely to choose different targets for the application of sanctions, and that this is liable to create much uncertainty all to the detriment of potentially beneficial economic relations.³² At the extreme, is there any realistic possibility of universally observed comprehensive sanctions- even perhaps, implemented by means of a naval blockade? Sanctions

³⁰ Ibid

³¹ Malanczuk, Peter (ed) 1997) (7th edition) *Akehurst modern introduction to international law*(Routledge: New York) see Haruge, Rod. Et al (1992) *comparative government and poliics: An introduction (macmillian press ltd. London)*

³² Grovogui, Siba N'zatioula (1996) *Sovereigns, Quasi-Sovereign and Africans: Race and Self-Determination in International Law* (Minnea Polis: University of Minesota Press).

may be imposed without any precise idea of the results they might be expected to achieve: perhaps it is because something needs to be done to satisfy the expectations of domestic or international public opinion³³. In other words, a nation will evaluate foreign policy in terms of domestic legitimating because it has no other standard of judgment.³⁴

The reaction of Canada and some European countries to recent punitive action taken by the US against Cuba for downing two civilian planes once more lays bare the hypocrisy of western diplomacy. Today the foreign policy of most powerful nations in the world including America itself, is based solely on national interests. Where an action needed to counter a threat to international law conflicts or clashes with the economic interests of western countries, they are prepared to overlook the rules of fair play and international obligation. So long as the leaders of 'western democracy' continue to pursue their foreign policies along these lines, there will be no end to dictatorship and the abuse of human rights.

On selective perception in Big power intervention, international events are selectively perceived by pertinent actors, and every reality has multiple meanings depending on the nationality and political orientation of the perceiver. To the superpowers themselves, these events had fundamentally different meaning; each justified its own behaviour as different in kind from the lawless intervention of the other.⁶⁸

Is encouraging human rights a legitimate goal of foreign policy? But the issue may be at best a distraction and at worst an encumbrance to the traditional jobs of diplomacy – i.e. promoting your country's interests and safeguarding its security. For instance, France and Russia have been hoping to win the lion's share of business contracts with Iraq, once sanctions are

³³ Bull, Hedley (1984) *Justice in International Relations* (The Hagey Lectures. Ontario, University of Waterloo) p. 18 see Keller, Edmond and Rotheild, Donald) ed. (1996) *African in the New International Order: Rethinking State Sovereignty and Regional Security* (Boulder, Co. Lynne Rienner Publishers).

³⁴ Hayes, J.P. (1987) *Economic Effects of Sanctions on Southern Africa* (Gower Publishing Co. Ltd. – for Trade Policy Research center: London) see Gordon, D.F. (1983) "The Politics of International Sanctions: A Case study of south Africa" – In *Dilemmas of Economic Coercion. sanctions in World Politics* edited by M. Nincic and P.W. Wallenstein (New York: Press) pp. 183-210. See Omitoogun W. Onigu-Otite, K. (1996) *The National Conference as a model for democratic Transition: Benin and Nigeria* IFRA/African Book Builders Ibadan. pp. 30-35.

⁶⁸ Kissinger, H.A. (1994) *Diplomacy* (New York: Schuster) see Watzer, M. (1994) *Thick and Thin: Moral Argument at Home and Abroad* (Notre dame: Univ of Notre dame Press) Kissinger, Henry (1993) "Foreign Policy is about the National Interest", *International herald Tribune* 25 October 5 see also Abrahamson, B.J. (1975) "The International Oil Industry" in J.S. Szylowicz and B.E. O'Neill (eds) *The Energy crisis and US Foreign Policy* (New York: Praeger) see Olorunyomi d. (1997). "Is America Singing Another Tune?" In *Nigeria Now* vol. 7, No. 3 see Neal, F.W. (1983) "Economic Sanctions. How to Damage Ourselves without Hurting the Soviet Union". in *Common Sense in US-Soviet Trade* edited by M. Chapman and C. Macy (Washington DC: Committee on East-West Accord).

lifted. Impoverished Russia is eager to get its hands on money owed it by Iraq. France sees a chance to brush up its credentials as an independent actor in international affairs. The French and Russians, with other temporary members of the Council, argue that encouragement, not nastiness, would get better results. The Iraqis say they have little to gain from working with UNSCOM because America would always veto the lifting of sanctions.

Similarly a third direct flight in two months from Moscow to Baghdad landed on 23 September 2000 carrying politicians, businessmen and aid in an apparent test of the UN sanctions regime against Iraq. France too sent a plane to Baghdad on 22 September 2000, full of antiembargo activists despite objections by Washington and London that the flight might have violated sanctions against Iraq. The plane from Moscow landed a day after a French plane arrived in Baghdad, sparking criticism from the US and Britain.

Russia along with France, argues that the UNSC never adopted a specific text banning all flights to or from Iraq. But the US and Britain say all flights to Iraq are banned unless they are permitted by the sanctions committee. It was a matter of much talk, little action on Nigeria by the West. In fact, Nigeria's position in Africa (a "crippled Giant" par excellence) is indispensable. It would then be suicidal to support sanctions against it. Indeed, sanctions are thorny and politically important issues.

Above all, the preamble of the UN implies that the UN has the right to interfere in the internal affairs of member nations if such an interference will guarantee world peace. But world peace is not selective, it is total peace all over the world. Bias occurs when comparable violations in different countries are treated differently for reason of politics or ideology. The claim is that partisan, rather than considerations of human rights, drive the human rights work of the UN.

In the field of human rights, the UN has limited powers to formulate international rules, narrow powers to supervise the national implementation of international norms, and no real powers of enforcement. But the UN does discuss human rights, often at length, keeping the issue on international agendas and through the instrument of publicity, attempting to promote improvements in national human rights practices. Partisan politics serves as a filter, protecting some states from scrutiny for reasons that have nothing to do with their human rights performance. The results is a disorted process and a tainted outcome in line with national whims

and desires. This bias however, actually results in underestimating violations based on a tendency to judge right-wing governments rather kindly. For instance, Zaire and second Obote regime in Uganda deserve high priority just as South Africa clearly deserved the most forceful international condemnation. Not, until lately, comparable violations of the right to self-determination do not receive comparable treatment as the tragic, but little known case of east timor indicates. In fact, the human rights violations of the Indonesian occupiers have been much more extensive and far more brutal. Come to think of it, Indonesia, by contrast, is a major power in the Third World. Furthermore, its strategic significance, oil resources, and long-run economic potential have brought for Indonesia considerable Western support. Nonetheless, the singling out of some states and not others is a clear and dramatic example of bias and double standards in the human rights work of the UN and the West generally. Afghanistan, however, breaks the patterns of exempting Soviet clients from scrutiny, and the 1982 and 1983 resolutions on Poland, the only European Country considered, are especially noteworthy and instructive.

It cannot be out of place to say at this juncture that the UN Human rights Commission's public consideration of country practices, while by no means adequate in either balance or scope, has over the last few years been much less biased than a consideration of the pariah regimes alone might have led us to expect.

However, the UN is not as willfully myopic as its stress on the pariah regimes might suggest. Nonetheless, human rights violators are selected for or exempted from public criticism largely on the basis of political considerations other than the nature, extent, and severity of their human rights violations. Countries singled out for criticism are, without exemption, deserving of international reproach. But no less reprehensible regimes receive only mild rebuke, or no mention at all, for largely political reasons. Not only who, but what, receives attention is in significant measure a matter of the political self-interest of the majority. It goes to say that politics, along with political bias, is the name of the game at the World Body. Countries such as US and the (USSR of old) which do have considerable political power are among the most biased of all countries in the UN when it comes to human rights issues. One might want to say, therefore, that the problem lies not in the UN but in its members. This however, is little more than a strained attempt at face-saving. But it is true that in the field of human rights, the UN does some things very well, especially standard-setting: the international normative consensus forged

through the UN has been a momentous achievement. In other areas, it does relatively poor job, in large measure because of the constraints imposed by the political part of the overall picture. But it is only part of a much more complex, and often rather attractive, picture.⁶⁹

Flowing from the above analysis, the question may be posed, “are sanctions currently having their declared objectives in the case of Russia over Ukraine? Is Russia complying or resisting? The answer, certainly cannot be in the affirmative considering steps being jointly taken by the US and its international partners, to continue to stand by the Ukrainian government in the face of Russia’s stiff refusal to comply with its international obligations. This is, without a shadow of a doubt, because a secure and peaceful Ukraine that is in good relations with all its neighbours is in the interests of the US and its allies. Contrary to conventional wisdom, that the recalcitrant state (in this case a major power) can be coerced by material pressures into conforming to a desired mode of conduct or into ceasing an undesirable mode of conduct, is not realistic.

Conclusion

The article has explored the legal, organisational and administrative problems involved in the establishment and operation of a system of sanctions, and analysed the influence of the international political environment on a system of sanctions. Ultimately, the article examined the effects of sanctions upon the delinquent state in terms of compliance effectuality as well as upon those states joining in their application.

⁶⁹ Jones, W.S. (1997) Op. Cit. See Donnelly, Jack (1988) “Human Rights at the UN 1955-85: The Question of Bias” *International Studies Quarterly* 32 (275-303) see Conlon, Paul (1995) *the UN’s Questionable Sanctions Practices* (ASSEN POLITIK vol. 46.

