

LINKÖPING UNIVERSITY  
Department of Management, Economics and Business Law  
Political Science  
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Tutor: Ronnie Hjorth

# Economic Sanctions Go Smart

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*A human rights perspective*

Maria Bengtsson

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## **Abstract**

The aim of this study is to discuss different motives behind the perceived transition from economic sanctions towards smart sanctions. The human rights aspect is also considered in the study, in terms of the wider humanism which is associated with smart sanctions. Does this relate to the fact that human rights have got an increased esteem in society, whereas economic, social and cultural rights be on equality with civil and political rights?

Economic sanctions have been used extensively during the 1990s, both by the UN and by different regional organisations and countries. The hardest sanction regime has been imposed on Iraq. In this study, Iraq is used to highlight economic sanctions and the outcome is discussed in order to highlight the transition towards smart sanctions. Smart sanctions have been imposed three times till now, where Zimbabwe was the last example in February 2002. The effects of these sanctions are put in contradiction to Iraq, and the differences between are discussed.

Conclusions are that the ongoing transition and development towards smart sanctions have a multilateral character, where economic, efficiency, ideological, and humane motives are of considerable importance. The humane motives are of most significance for this development. Smart sanctions will continue to develop and be implemented, when international society find it necessary to maintain or restore peace or emphasise the existing rules or norms in the prevailing world.

Despite the motives behind the transition towards smart sanctions, the dividing line between the two groups of human rights is still distinct. But due to new initiatives from both the UN and NGOs such as Amnesty International this dividing line is slowly starting to erase. It is not possible now to state that economic, social and cultural rights have got an increased esteem and be on equality with civil and political rights, but if the beginning consciousness is here to stay, it is likely to see an increased esteem in the near future.

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## List of Abbreviations

CPR	Civil and Political Rights
ESCR	Economic, Social, and Cultural Rights
EU	European Union
FAO	Food and Agriculture Organisation
HDR	Human Development Report
HR	Human Rights
ICCPR	International Covenant Civil and Political Rights
ICESCR	International Covenant Economic, Social, and Cultural Rights
IGO	Inter-governmental Organisations
NGO	Non-governmental Organisations
UDHR	Universal Declaration of Human Rights
UNICEF	UN Children's Emergency Fund
UN	United Nations
WHO	World Health Organisation
WFP	World Food Programme

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## 1 Introduction

After World War II human rights (HR) came into light and obtained recognition among the norms of international relations. There has been a strong confidence in HR and a will to create a new moral and policy in international relations through international law, social development and improved standards of living. After the war, people around the world agreed never to let the same things happen to mankind again. The will to emphasise this 'never again' can be found in the creation of the United Nations Universal Declaration of Human Rights (UDHR). There has been a strong will to confirm the faith in human rights by a declaration in order to save future generations from war and genocide. 50 years have passed since the creation of UDHR and these years do not correspond totally with the ideas of UDHR. These 50 years are characterised by some of the worst scenarios mankind has ever experienced, such as brutal war and genocide. It is estimated that about 36 million people have died as a result of armed conflicts and war. In addition to this, another 150-170 million people have died as a consequence of abuse from their own states and governments.<sup>1</sup>

Slowly, a global human rights regime has emerged which recognises every persons right to political, civil, economic, social, and cultural rights, at least on paper. The consensus concerning HR is relatively distinct, but there is a dividing line within the HR-debate. Two evident sides can be distinguished; one claiming civil and political rights (CPR) priority, whereas the other puts economic, social, and cultural rights (ESCR) in focus.<sup>2</sup> Following the western world's political and economical dominance, CPR have obtained greater value than ESCR. International actions have violated certain rights, such as the right to an adequate standard of living<sup>3</sup>, in a step towards maintaining or initiate other rights, for example the right to freedom of opinion and expression or the right to democracy<sup>4</sup>. But is this paradigm about to change? Amnesty International recently extended their mandate to cover *both* CPR and ESCR. According to Amnesty, human rights are inseparable and interdependent. This new approach is an important step towards further development of HR. Is this an indicator that ESCR are becoming more important? Is it a sign showing that the two groups of rights are starting to be considered as one body in the international debate? In that case, what is the reason?

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<sup>1</sup> Forsythe D (2000) *Human Rights in International Relations* p. 5f

<sup>2</sup> Eide A (ed) (2001) *Economic, Social, and Cultural Rights* p. 3ff

<sup>3</sup> UDHR Art. 25

<sup>4</sup> UDHR Art. 19, Art. 21

Economic sanctions have been used by international society both as a preventive measure against e.g. violation of HR, and as a penalty when 'crimes' have been committed. These are considered as legitimate and effective measures in the struggle for, among other things, human rights. Prior 1990, the United Nations (UN) imposed economic sanctions only twice, against Rhodesia 1966 and South Africa 1977. The use of multilateral economic sanctions have, however, escalated and been a frequent strategy during the 1990s. The UN have imposed multilateral economic sanctions 12 times during this period and in addition member states of the UN have imposed unilateral, bilateral, or regional economic sanctions frequently during the 1990s.

The hardest sanction regime has been imposed on Iraq, and the sanctions are still there 12 years after the imposition. It has also become apparent that economic sanctions degenerate peoples rights to an adequate standard of living and social security by reducing the access to food, medicines, healthcare, pure water etc. whereupon people are deprived of their economic, social, and cultural rights. It is remarkable that economic sanctions are used as a part of the work intending to achieve for example civil and political rights, when such sanctions simultaneously result in limitations of the same rights. Lately these economic sanctions tend to be abandoned in favour of so called *smart sanctions*. Recently the EU has imposed smart sanctions against Zimbabwe. These kinds of sanctions are assumed not to affect the civilian population in the same sense as economic sanctions, why humanitarian catastrophes can be avoided. Should this be taken as an indicator towards a transition to smart sanctions? If so, does it only depend upon the proven ineffectiveness of economic sanctions or do the humanitarian effects matter? Has there been a deeper alteration of the values surrounding the human rights area and can this new sanctions approach be mirrored in the awareness of HR?

The aim of the study is to discuss different motives behind the perceived transition towards smart sanctions. Furthermore, is the wider humanism, which is associated with smart sanctions, related to the fact that human rights have got an increased esteem in society, whereas ESCR be on equality with CPR?

After careful consideration, a qualitative approach seemed to correspond best with this study. The qualitative method is useful since I am more interested in understanding the phenomena of smart sanctions and human rights, than calculating connections and trying hypotheses etc. Qualitative research is often inductive. A reality that the researcher doesn't

have major knowledge about, sanctions in this study, is approached without clear hypothesis. The goal when using this method is to develop the idea as a phenomenon and obtain an understanding of all the aspects of the phenomenon.<sup>5</sup> Using a qualitative method has advantages for the study, since there is an emphasis on processes and meanings rather than on results and products.<sup>6</sup> The intention is, as emphasised before, to discuss different perspectives whereupon it is hard to confirm or reject different outcome interpretations. What is happening in the fields of sanctions and human rights? What changes are noticeable?

Two concrete cases (Iraq and Zimbabwe) are studied and observed. By highlighting and confronting these two illustrative cases with each other, it's possible to discuss the motives and forces behind the transition towards smart sanctions. Additionally, the two cases are also used in order to capture problems and moral dilemmas surrounding the two types of sanctions. This is done through the prism of the Just War Doctrine, under the principles of *jus ad bellum* and *jus in bello*.<sup>7</sup>

The two illustrative cases, Iraq and Zimbabwe, need to be discussed. These are illustrations and examples necessary for the accomplishment of the study. Without these cases it wouldn't be possible to highlight the transition towards smart sanctions. Iraq is object to economic sanctions and these sanctions tend to last longer and be more ruthless than normal. I entitle Iraq as an atypical case. One might ask if it's wise to use Iraq in the study due to its 'unusualness' as an economic sanction. I claim it is. On account of these sanctions, a new awareness of humanitarian consequences arising from economic sanctions has come into view. I consider the rise of smart sanctions to be a consequence of this sanctions regime. The second case, Zimbabwe, is uncomplicated. Zimbabwe is the third case exposed to smart sanctions.<sup>8</sup> For that reason there are not many cases to choose among. I decided to choose these two. It gives me the possibility to follow the contemporary development of the imposed sanctions, which might be interesting. Furthermore, the idea of smart sanctions continues to develop why it would be interesting to use the latest one and study whether it has given results or not. However, it might not be totally fair to compare these two cases to each other. The sanctions were imposed on Iraq in 1990 and on Zimbabwe in February 2002. More time has passed by in the Iraq case, why this is easier to evaluate. Additionally, the two

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<sup>5</sup> Halvorsen K (1989) *Samhällsvetenskaplig metod* p. 78

<sup>6</sup> Merriam S (1994) p. 30f

<sup>7</sup> See chapter 5.2.1 for more explanations

<sup>8</sup> Smart Sanctions have been imposed against Milosevic 1999 and the Taliban regime in Afghanistan. See also page 30 in this study.

cases are naturally not of the same extent because of the differences between them. It is important to remember that the sanctions are of different kinds, which in fact is the whole point with the development of new sanctions and this study.

## **1.1 Delimitations**

The chosen period of time for the study is the 1990s and onwards. The reason for choosing this period is twofold. The illustrative cases of the study originate from the period and the use of multilateral economic sanctions have increased strikingly. There are also clear signs showing that human rights have become an accepted part of international relations. It can be argued that this perspective of time might be too long. But, it takes time before it is possible to see the impacts of economic sanctions and thereby takes time before there are reliable evaluations covering the sanctions. Furthermore, it takes time for criticism to emerge, influence and be published. In addition, a longer period of time is necessary in order to decide if a permanent change of attitude regarding human rights has emerged.

The second limitation is of spatial character. I have chosen to scrutinise multilateral economic sanctions and smart sanctions. Consequently, the analysis will be on a global level. Besides that, I am tracing a change of value, which indicates if economic, social, and cultural rights have achieved an increased status. This can result in some problems, as the work concerning human rights has reached different levels in different parts of the world. The alternative is to aim only at one region, for example Europe, which is extremely prominent in the area of human rights. The consequence will then be that the result is only applicable in Europe.

### **1.1.1 Note on Sources**

Literature of different kinds is a good source for the type of study I am conducting, since the chosen spatial level limits the methodological alternatives and thereby other possible sources. It is important though, to be critical and try to understand in which scholarly tradition the literature has emerged. The reason for this is that there are a variety of different perspectives whereupon we interpret the same phenomenon differently. Further reservations regarding secondary sources are appropriate since they are most likely produced for other purposes than the one here and might therefore not be useable. At the same time, I am aware of the difficulties between the theoretical problem drafting and the analysis with the collection and arrangement of the material. With consideration to this, the literature is chosen with precision and should be suitable for this study.

On the subject of human rights, a few scholars and authors are frequently referred to. David P. Forsythe, Jack Donnelly, John Vincent, and Chris Brown are acknowledged authorities in the field. Forsythe and Donnelly are used most frequent. Forsythe, professor of Political Science, writes from a liberal angle. He is the author of several works such as *Human Rights in International Relations*<sup>9</sup> and *Human Rights and Comparative Foreign Policy*.<sup>10</sup> Donnelly, professor of International Relations, also confesses himself to the liberal tradition. He is the author of among others, *International Human Rights*,<sup>11</sup> *Universal Human Rights in Theory and Practice*, and *Realism and International Relations*.

The homepage of UN and especially of UNHCHR, have been used extensively. Resolutions, treaties and other information have been gathered from here. I regard the information on this homepage to be reliable.

Regarding the field of economic sanctions, a couple of scholars are considered to be experts in the field. Margaret P Doxey, Geoff Simon, Thomas G. Weiss, David Cortright, Peter Wallensteen and others. The direction differs between them depending on which period they are writing from. Wallensteen and Doxey evaluate economic sanctions from the end of the 1970s while the others study and criticise economic sanctions which occurred during the 1990s. Moreover, they are taking the humanitarian aspect into consideration as well, in contrast to the other two authors. Regarding smart sanctions, the literature is not of the same proportions as the ones regarding economic sanctions. David Cortright and George A Lopez have started to gain interest in the area and published some papers covering the topic. A handful of expert seminars have also been conducted, where the Expert Seminar on Targeting UN Financial Sanctions in Interlaken (1998, 1999) and the ODI conference; Can Sanctions Be Smarter? (1998) are the most prominent.

A problem regarding the literature is that it's written in the western world and thus from western perspectives and values. This could result in a twisted result, since I am tracing a change of value. As far as I understand, this is a common problem for social science given

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<sup>9</sup> He examines the policy-making process that establishes and tries to apply human rights norms through the UN, regional organisations, human rights groups and transnational corporations. Some ideas emerge: HR will still be a part of international relations, state sovereignty transforms by the HR discourse, private actors are very important in the development of HR

<sup>10</sup> He examines the place of human rights in contemporary foreign policy. Liberal democracies and other forms of foreign policy on human rights are analysed

<sup>11</sup> The core ideas are: An absolute view of sovereignty can stand in the way of universal human rights. HR and democracy don't really function together. Only when democracy takes on a liberal version does it go with human rights. Just as human rights, welfare states might need to refine the market economy in order to enjoy ESCR

that only with great problems one come across literature which depicts for example Asian or Islamic values.

## **1.2 Disposition**

The first chapter provides a background for the essay, and the purpose of the study is outlined and defined. Furthermore, chosen methods and approaches are explained. As well collections of the data and limitations are presented in order to give the essay a strict frame.

Chapter two is devoted to the analytical tools, in order to give the reader a theoretical point of departure for the study. The evolution of human rights is described, as well as different perspectives of human rights concepts, in order to illuminate the current human right situation. Additionally, realist and liberal ideas are interwoven to highlight how differently human rights and economic sanctions can be considered, if they are approached from different perspectives.

The third and fourth chapters highlight the phenomena economic sanctions and smart sanctions. The main characters of these two types of sanctions are explained and the two illustrative cases in the study, Iraq and Zimbabwe, are brought to light from their respective type of sanction.

Chapter five discusses what the transition towards smart sanctions signifies or can signify. Different motives behind this transition are emphasised and discussed. Human rights and humanitarian issues are interwoven into this discussion. Furthermore, the two different types of sanctions that flourish in the study will be discussed through the prism of Just War Doctrine.

The sixth chapter seeks to explain how the world has emerged, in the fields of human rights, after the Cold War. It tries to emphasise significant theories that have had an influence on the development of human rights, such as realism and liberalism.

The seventh and last chapter highlights the problems concerning the indivisibility and interdependence between the groups of human rights. Additionally, it discusses the problems related to increase the esteem of economic, social and cultural rights.

## 2 Analytical Tools

### 2.1 Human Rights

“Human rights are the rights that everyone has, and everyone equally, by virtue of their humanity”.<sup>12</sup> Human rights are thus rights one has simply because one is human and they are held equally by all. Jack Donnelly refers to them as “a special type of right, they are paramount moral rights and they are universal rights”<sup>13</sup> A proper thought is; what lies in the concept having a right? Donnelly argues that the term right has two principal moral and political senses. “*What is right*”, and the denomination that “*one has something*”. The first concerns the right thing to do. For example, it is right to help the needy and wrong to steal. It leads to an obligation to do what is right, whereupon the focus is on the righteousness of the required action. The latter emphasises that one has, can claim, practice, enforce or violate rights. The central focus is the relationship between the right-holder and the duty-bearer. A common appellation between these two concepts is that both create relations between those who have a duty and those who owe or benefit from that duty.<sup>14</sup> Donnelly stresses that human rights rest on an account of a life in dignity to which humans are well suited and that human rights indicates what human beings might become, not what they have been. When considering these assertions, it’s evident that this is the true way to interpret and understand the term. Most of all it gives hope since it’s a strove forward, looking and aiming for the future is always better than doing the reversed.

### 2.2 The Evolution of Human Rights in the Prevailing Political World

The origins of the idea of rights can be found in the theories of Natural law.<sup>15</sup> By the middle of the 18<sup>th</sup> century the society had begun to identify universal rights to people and property (Rousseau: *Man is born free; and everywhere he is in chains*), the liberty of the press (Voltaire: *I know many books that fatigue, but none which have done real evil*), and the right not to be subjected to torture (Cesare Beccaria: *Punishments that exceed what is necessary for the protection of the deposit of public security are by their very nature unjust*)<sup>16</sup> Man was born free, but at the time of Rousseau’s observation was everywhere in chains. The first to break them were the Americans in 1776 and soon after the French in 1789. Human rights didn’t become an

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<sup>12</sup> Vincent RJ (1986) *Human rights and international relations*, p.13

<sup>13</sup> Donnelly J (1998) *International human rights* p. 19

<sup>14</sup> Donnelly J (1998) p.19ff

<sup>15</sup> Brown C (1997) *Human Rights*, p.602

<sup>16</sup> Robertson G (2000) *Crimes against humanity, the struggle for global justice*, p.5f

established expression or part of international relations until the UN Charter was created in 1946, where the preamble states to reaffirm faith in fundamental human rights.

In 1948 the United Nations Universal Declaration of Human Rights (UDHR) was adopted. It was the first time the international community attempted to define a comprehensive code for the member states. The Declaration was adopted without any nation voting against, but eight states abstained. South Africa was one. South Africa rejected the statement that “all are born free and equal in dignity and rights”.<sup>17</sup> Soviet’s objection concerned the absence of sufficient attention to social and economic rights and Saudi Arabia abstained on religious ground. The critique and scepticism against human rights can clearly be mirrored through these objections. Firstly, UDHR strife against stipulating all states sovereignty and domestic jurisdiction in the UN Charter. Secondly, Soviet draws attention to the problems regarding the emphasis on political and civil rights in contrast to the economic, social and cultural rights. Finally the Saudi statement pinpoints the discussion about the HR-declarations intended universality and the controversial in that.<sup>18</sup> The adoption of UDHR was shortly followed by the adoption of the Genocide Convention and the Four Geneva Conventions.<sup>19</sup>

The rise of the Cold War halted the initial HR-progress, and made way for the realism ideology in international relations. Realism has been the dominant prism in the western world for understanding the same. The cornerstone is sovereignty, non-intervention in domestic affairs and national interest. Rational states in an anarchy world should concentrate on protecting their existence and own values. The welfare of individuals and human rights are not important or preferential, since the focus is on interest rather than ideology or morality.<sup>20</sup> For that reason human rights became just another arena of the superpower struggle. Consequently, the evolutionary process for international HR law was brought to almost a standstill by the Cold War, due to the fact that the power struggle prevented agreements concerning universal principles (except the principle of non-intervention).<sup>21</sup> Furthermore, the realist principle of state sovereignty leads to all states being able to choose their own independent course, based on state interests, rather than supply a general policy in the name of human rights. According to realist states are only ready to defend traditional

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<sup>17</sup> UDHR Article 1

<sup>18</sup> Brown C (1997) p. 606

<sup>19</sup> Robertson (2000) p. 148

<sup>20</sup> Donnelly J (1998) p.30

<sup>21</sup> Forsythe D (2000) *Human Rights and Comparative Foreign Policy* p.8

central interests<sup>22</sup>, which human rights weren't during the Cold War. Other issues were more important in the eyes' of realists, for example gaining more power and aim for hegemony. Moreover, realists are sceptical of the idea that universal moral principles exist and discount the appearance of values such as real commitment to human rights. Instead they believe that states always will prefer separateness and independent policy making in favour of advancement of human rights. If and when violations of human rights are committed inside a state, the realists are prepared to look away.<sup>23</sup> Evidently this occurred in several occasions during the Cold War and just in line with the realist theory, other states looked away.<sup>24</sup>

The impact of the Cold War was also evident in the work on further elaborations of international human rights standards. Agreements concerning human rights regulate states treatment of its own citizens, realist argues that international human rights policies are looked upon as illegal trespassing in sovereign states internal affairs. George Kennan states in the line of realism that "The process of government ... is a practical exercise and not a moral one"<sup>25</sup>. It is obvious, focus is on the so-called hard politics<sup>26</sup>, why moral issues such as human rights had to stand back. This had consequences for the continuing work with international norms and for HR. Progress began again in the 1960s and the UN began to re-emphasise human rights. Even though the superpowers disagreed about the statues of economic, social and cultural rights an agreement was finally reached. In 1966 the International Human Rights Covenants were completed. The treaty envisioned in 1948 was broken into two (as a consequence of the Cold War), the International Covenant on Economic, Social, and Cultural Rights (ICECSR) and the International Covenant on Civil and Political Rights (ICCPR).<sup>27</sup> The UNHRC decided that these socialist ideals were qualitatively different from liberty rights, both in theory (they must depend upon governmental policies, not court decisions) and in practice (they need a great deal more money to implement) so they were co-signed to a separate treaty.<sup>28</sup> These covenants together with UDHR are an authoritative source concerning HR, which the majority of the world's countries recognise, at least in theory. The western UN-dominance during the 1940s can clearly be mirrored in the UDHR, as the political freedom is emphasised. This was possible due to the world order that

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<sup>22</sup> Donnelly J (1998) p. 30

<sup>23</sup> Dunne T (1999) *Realism* p. 142

<sup>24</sup> For example Chile, Argentina, Cambodia violated human rights to a great extent.

<sup>25</sup> Donnelly J (1998) p. 30

<sup>26</sup> According to Fred Halliday 'high politic' is military and strategic issues

<sup>27</sup> Robertson G (2000), p. 157

<sup>28</sup> Donnelly J (1998), p. 10

emerged out of the Bretton Wood conference 1944, which built on the western belief and value systems: modernity, individuality and accumulation of capital. Despite the realism approaches in foreign policy, international human rights did develop during the Cold War era. Evidently realism cannot explain this development, since it's against the very nature of realism. One explanation model is to suggest that most states have been either hypocritical or sentimental in approving the human right norms.<sup>29</sup>

As an opposite pole to the realist dominance in foreign policy, liberalism got renewed attention during the latter half of the 19<sup>th</sup> century. In contradiction to realism, liberalism can be said to outline the basis for human rights. The central concern is the liberty of the individual. Moreover, they consider the state necessary in order to preserve the individual liberty from being destroyed or harmed by other individuals or states. The state should also respect personal autonomy and preferences, and pay special attention to the vulnerable and marginalized.<sup>30</sup> In stark contradiction to the realist view, the good or the welfare of the person is the cornerstone of policymaking, not the national interest. The state should in other words be the servant of the collective will and not the master as it is in the realist theory.<sup>31</sup> In line with UDHR, liberals emphasise the respect for personal rights, where this respect is based upon equal worth of the individual. The goal of international relations is peaceful and rational diplomacy, but simultaneously at times when the only realistic way to end calculated human rights violations is through violence, liberals don't disagree.<sup>32</sup>

The 1970s saw a growth of human right NGOs. They have played an important role in legitimating international concern about human rights. Multilateral, bilateral and non-governmental human right activities continued to rise during the 1980s, and norms continued to develop. International human rights are no longer discussed in a wider range of countries. They are treated as an ordinary part of international relations.<sup>33</sup> The causes for the rise of human rights are to be found in the political struggle for a life in dignity. This struggle is continuous and people work hard all over the world for what they consider to constitute a good life. As a result a growing support for a global human rights culture which tries to

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<sup>29</sup> Forsythe D (2000) p. 32

<sup>30</sup> Forsythe D (2000) p. 31f

<sup>31</sup> Dunne T (2001) *Liberalism* p. 163

<sup>32</sup> Forsythe D (2000) p. 32

<sup>33</sup> Donnelly J (1998) p. 12f

protect all rights for all humans and humanitarian values, has risen. Despite the increasing moral awareness the discussions and disagreements concerning human rights are many.<sup>34</sup>

During the UN Conference in Vienna 1993, there was a genuine desire to put human rights at the centre of the 'New World Order'. All 185 UN nations ratified the UN Covenant on Civil and Political Rights, but not all states ratified the Covenant on Economic, Social and Cultural Rights. Furthermore, Third World objection came into light. These objections didn't concern the very idea of HR as to its elucidation in the UDHR and the twin covenants. Instead they were said to embody western perceptions of freedom, which are not the same as in Asia, Africa and states governed by religious laws. Even though 50 years have passed since the adoption of the different covenants, it seems like the discussion is back to where it started before the Cold War. How come?

### 2.3 Different Generations of Human Rights

It is common nowadays to distinguish between three different notions of rights. *First generation rights* i.e. civil and political rights. These are the classical political rights, associated with liberal western regime. Everyone should enjoy liberty and protection from the states abuse of power.<sup>35</sup> *Second generation rights* concern economic, social, and cultural rights indispensable for his dignity and the free development of his personality.<sup>36</sup> These rights are more complicated than First generations because someone else, principally the state, has to supply for these needs if the individual is not capable of it himself. It has also been argued that economic and social rights should not be called rights on the ground that they cannot be provided or enforced in many countries because the government lacks the necessary resources, whereas the civil and political rights make no such demands. *Third generation rights* build on the collective dimension and concern the rights of 'people'. People have the right to 'freely dispose of their wealth and natural resources', the right to preserve one's culture or the right of a community to protect its environment.<sup>37</sup>

Second generation rights rest upon the concept that all humans have right to adequate standard of living, clothing and housing and the continuous improvement of living conditions. There are problems related to second generation rights. First, it is not certain that

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<sup>34</sup> Wheeler N J (1999) *Humanitarian Intervention and World Politics*, p. 405

<sup>35</sup> Rendel M (1997) *Whose Human Rights*, p. 34ff

<sup>36</sup> UDHR Article 22

<sup>37</sup> Rendel M (1997) p. 34ff

these rights can be achieved, and by that the essence of the Covenant undermines. An example, the right to food is not only a national question, when it comes to food there must be some kind of international fixed norms about distribution, which is a huge obstacle. Secondly, there might be states trying to undermine the political and civil rights by referring to ESCR. For example, dictatorial regimes in the Third world have justified violation of political and civil rights, in order to secure economic growth or economic equality. Lastly, all states have a positive obligation to strive for economic wealth and freedom from hunger all over the world, since the states have recognised human rights.<sup>38</sup> Consequences drawn from this is a kind of inversely Robin Hood dilemma; the rich have to share with the poor. The rights of the poor man means that the rich man has to meet this right, but simultaneously it creates the rich mans right to demand from the poor not to make the situation worse.

Third generation rights are the rights of the 'people', not individual rights but rights based on solidarity. These rights are an attempt to find a solution to the international inequalities and they are very important because they affect the possibilities to implement the two other categories of rights, especially in the Third World. Third generation rights highlight the question of HR universalism, since 'peoples' rights signify that other 'people' can claim special rights.<sup>39</sup>

The division between First and Second generation rights points out the differences in ideology and values between east and west. The objection from Soviet concerning the insufficient emphasis on economic, social and cultural rights can be understood in this perspective. The conviction that UDHR was a try to stigmatise socialist states and regimes is perhaps not a totally wrong assumption from the eastern bloc.<sup>40</sup> The Americans work for human rights have had a significant relation to First generations rights, and the goal was to prevent a spreading of socialist and communism values. Support has been given to US-friendly regimes, no matter if these have been totalitarian, authoritarian or if they have committed crimes against human rights. It is paradoxical but West often made strong statements during the Cold War, condemning crimes against human rights committed by Soviet and their allies. Crimes committed by West or their allies on the other hand have not been noticed.

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<sup>38</sup> Brown C (1999), p. 478ff

<sup>39</sup> See Daes E-I (2000) *Indigenous Peoples and Human Rights in Human Rights: Concept and Standards*

<sup>40</sup> Brown C (1999) p. 476

The work in the human rights area is, as noticeable, an always ongoing and developing process. The newly gained interest in Third generation rights and the question of universalism and relativism, give clear signs that the issue will continue to be of great significance in international society. It is though extremely important that human rights issues always are ongoing, otherwise people will not be able to enjoy their First, Second and Third generations rights simultaneously. There is obviously something about the idea of human rights that has proved to be widely attractive, and by continue following the pace of the liberal world, it still will be.

### 3 Economic Sanctions

Multilateral economic sanctions have been a common measure on the global arena during the 1990's. The 1990's are referred to as "the sanctions era."<sup>41</sup> During the past decade the UN Security Council imposed multilateral sanctions 12 times while during the previous 45 years it had done so only twice. The United States and the European Union applied sanctions dozens of times during the decade. Also noteworthy is how these sanctions have served multiple purposes: to uphold democracy, protect human rights, punish regimes harbouring terrorists, reverse armed aggression and prevent weapons proliferation.

#### 3.1 The Conception of Economic Sanctions

Economic sanctions are actions initiated by one or more international actors, *the senders*, against one or more others, *the targets*. The purpose of them can be twofold: to punish the targets by depriving them of some value and/or to make the targets comply with certain norms the senders deem important. This could be human rights issue. Economic sanctions are limitations on trade or access to markets created to encourage a target nation to behave in a way preferred by the sanctioning nations. Economic sanctions cover four different types of trade limitations: (a) restrictions on the flow of goods, (b) restrictions on the flow of services, (c) restrictions on the flow of money, (d) control of markets in order to reduce or eliminate the target's chance of gaining access to them.<sup>42</sup> There are several different forms of economic sanctions. Boycotts are one. The goal is to achieve economic and social isolation of an individual, a group of individuals or a state. Another form is embargoes. A ban is put on transports of goods to another state via air, sea or land. Embargoes are viewed as a more hostile form of sanctions because property belonging to another state can be confiscated. Other forms of sanctions are freezing or blocking of financial assets, weapon and military technology, as well as travel-and visa restrictions.<sup>43</sup>

A characteristic of economic sanctions is that they are designed to cause economic harm to another state. They resemble as well to war, because both types are used to harm another state in order to make them change their policy or behaviour. The basic idea is that the burden of economic hardship will become intolerable to the people of the targeted state, who in return will pressure the leaders to change the policies. A sanction can be said to be a form

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<sup>41</sup> Wiess G et al (1997) *Political Gain and Civilian Pain Humanitarian Impacts of Economic Sanctions*, p. 3

<sup>42</sup> Winkler A (1999) *Just Sanctions* p. 136

<sup>43</sup> Lopez G, Cortright D (2000) *Toward Ethical Economic Sanctions*

of punishment aimed against a nation in order to get this state to follow international law or make changes in its politic.<sup>44</sup> In this context it could be argued that sanctions have an ethical aspect since it's used in order to encourage or punish a certain morally action. The goal for economic sanctions can vary and be divided into primary and secondary goals. Primary goals are easier to identify because they are often declared, e.g. putting pressure on an apartheid-regime as in the case of South Africa, increasing respect for HR, fighting terrorism etc. A secondary goal might be to establish a disarmament process or try to make some changes in a states constitution.<sup>45</sup>

UN sanctions may be imposed both in peacetime as well as in times of armed conflict. The Security Council can call for collective economic sanctions under chapter VII<sup>46</sup>, article 41<sup>47</sup> of the UN Charter. Thus it must first be determined, under Article 39, the existence of a threat to the peace, breach of the peace, or act of aggression, and if the sanctions are imposed to maintain or restore international peace and security.<sup>48</sup> If these criteria don't exist, sanctions aren't allowed to be implemented. Concerning EU imposed sanctions, articles 60 and 301 (The Treaty establishing the European Economic Community) regulates the use of them. These sanctions need to be part of a common measure. In order to implement sanctions a decision needs to be taken within the common foreign and security policy with unanimity in the Council.

Even though sanctions in different ways are similar to war they have one advantage, which have made them so popular. They are not as expensive as war. President Woodrow Wilson<sup>49</sup>, one of the first who recommended economic sanctions as strategy, considered them to be faster, less filthy and more efficient than regular war:

A nation that is boycotted is a nation that is in sight of surrender. Apply this economic, peaceful, silent, deadly remedy and there will be no need for force. It is a terrible remedy. It does not cost a life outside

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<sup>44</sup> Winkler A (1999) p. 136

<sup>45</sup> Haas R N (1998) *Economic Sanctions: Too much of a bad thing*

<sup>46</sup> For further information, see chapter VII articles 39-51 in the UN Charter.

<sup>47</sup> Article 41, The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

<sup>48</sup> Segall A (1999) *Economic Sanctions: legal and policy constraints*

<sup>49</sup> Wilson was the president of the US 1913-21. Despite this view concerning economic sanctions, it has to be stated that he had a liberal position.

the nation boycotted, but it brings pressure upon that nation which, in my judgement, no modern nation could resist.<sup>50</sup>

In contrast to modern warfare, economic sanctions offer a theoretical possibility for international society to act without any bloodshed. Sanctions have been seen as more humane than military intervention, because they aren't suppose to bring about any internal political costs if they should fail. Another reason of the rising popularity for sanctions in the 1990s is the development of the international economy. The dependence between the states has increased, which makes the countries more vulnerable.<sup>51</sup>

Sanctions are on the other hand also known to be notorious for their low rate of success in achieving political goals. It has been estimated that economic sanctions only achieve the compliances of the target state about 1/3 of the time.<sup>52</sup> With this result, one can question the wide use of sanctions during the 1990s. Sanctions are obviously ineffective in 2/3 of the times, but still they seem to be efficient enough otherwise they would not be implemented. It is an equation that doesn't fit. But even this low figure, 1/3, has been challenged as far too optimistic. The typical responses of people in a sanctioned country are "rally around the flag". They support the leadership despite the coercion according to Winkler.

Prior the Post-Cold War era it wasn't really possible for the Security Council to make decisions about economic sanctions since the superpowers couldn't agree upon such actions. During the 1990s this scenario has evidently changed and we are also able to see other actions in addition to economic sanctions where the superpowers co-operate. Sanctions have therefore been popular means because they allow states with different political starting-points to co-operate and share the responsibility when a crisis occurs, which they normally would be at variance about. One might state that a form of "mini-max" possibility has arisen.<sup>53</sup>

### **3.2 Economic Sanctions in Reality – the Case of Iraq**

On 2 August 1990, Iraqi forces invaded Kuwait. On 6 August the Security Council adopted resolution 660 and imposed economic sanctions against Iraq. Since then nine more Sanction resolutions have been adopted. The imposed sanctions hit the civilians in Iraq with an

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<sup>50</sup> Winkler A (1999) p. 137

<sup>51</sup> Winkler A (1999) p. 137

<sup>52</sup> Winkler A (1999) p. 138

<sup>53</sup> Weiss T G et al (1997) p. 15ff

immense effect. From August 1990 till April 1991 only “supplies intended strictly for medical purposes” were allowed to go through the embargoes. From April 1991 foodstuff and “essential civilian supplies” were also allowed.<sup>54</sup>

The consequences of the sanctions regime were soon obvious. UN-official Martti Ahtisaari published a report of the situation in September 1991: “...nothing that we had seen or read had quite prepared us for the particular form of devastation which has now befallen the country. The recent conflict has wrought near apocalyptic results ... the flow of food through the private sector has been reduced to a trickle ... Many food prices are already beyond the purchasing reach of most Iraqi families ... widespread starvation conditions are a real possibility.”<sup>55</sup> Mr Ahtisaari recommended the immediate lifting of sanctions with respect to food supplies and identified the urgent need for equipment and materials for agricultural products, water, sanitation and health care.<sup>56</sup> The harsh reality is that any reduction or lifting of sanctions requires the unanimous agreement of all five permanent members of the Security Council, whereupon no sanctions were lifted.

In July 1993 FAO reported that the sanctions had paralysed the country’s economy and the land generated persistent deprivation, chronic hunger, endemic under nutrition, massive unemployment and a widespread human suffering. FAO addressed it as “a grave human tragedy.”<sup>57</sup> In 1996 the vast majority of Iraqi civilians supported themselves in a state of extreme hardship and deprivation, with healthcare, nutrition, education, water, sanitation and other basic services on a minimum level.<sup>58</sup> Among the hardest hit the situation was worst for women, children and elderly. Sanctions often worsened the suffering of those already affected by war or other serious difficulties. In Iraq the annual income per capita was estimated at \$335, and fell to \$65 in 1991 and \$44 in 1992. In addition, human rights violations became “increasingly common” as the government confronted the increasing desperation of Iraqi citizens.<sup>59</sup>

The sanctions imposed on Iraq resulted in what is widely held to represent a humanitarian catastrophe. Health and mortality statistics document shocking deterioration. Post-war Iraq has experienced an increase in infections, diseases associated with poor sanitation including

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<sup>54</sup> Weiss T G et al (1997) p. 104

<sup>55</sup> Simons G (1999) p. 174

<sup>56</sup> Weiss T G et al (1997) p. 95

<sup>57</sup> Simons G (1999) p. 175

<sup>58</sup> Weiss T G et al (1999) p. 110

<sup>59</sup> Weiss T G et al (1999) p. 225

cholera, polio and typhoid.<sup>60</sup> Some examples to highlight the situation; typhoid incidents rose from 11/100,000 in 1990 to 142/ 100,000 in 1994. Cholera reached near-epidemic levels after the Gulf War and malnutrition among children rose sharply as well. The worst increase was the rise in infant and child mortality.<sup>61</sup> Although some of this data has been challenged, the existence of a severe humanitarian crisis caused by the imposed sanctions is undeniable. From a human rights perspective, these sanctions are not defensible. Many of the outlined rights are not satisfied, especially not ESCR. But have this total rejection of ESCR in Iraq, resulted in an increased esteem for the same rights in the international community?

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<sup>60</sup> Weiss T G et al (1999) p. 118

<sup>61</sup> Minear L et al *Toward More Humane and Effective Sanctions Management: Enhancing The Capacity of the United Nations System* p. xx

## 4 Smart Sanctions

Today's policymakers and scholars increasingly articulate the importance of developing a new sanctions mechanism. Smart sanctions have emerged or developed out of this need. The principle of these sanctions is simple. Instead of targeting a whole country, smart sanctions target just the leaders. The design of these sanctions begins by identifying the groups or individuals responsible for the wrongdoing (who are blocking reform). The needs and desires that motivate them should as well be identified.<sup>62</sup> Then follows, selecting methods aiming to target the elites responsible for the offensive policy and thus aims to minimise hardship on the general population, especially the most vulnerable. This is the concept of smart sanctions. In this new approach financial sanctions compose the centrepiece, rather than traditional general trade embargoes.<sup>63</sup> Financial sanctions include measures such as freezing foreign assets of a targeted country, government or individuals. The suspension of credit and grant aid from national governments and international financial institution. It also includes the denial or limitation of access to overseas financial markets.<sup>64</sup> Also falling into the category of smart sanctions are restrictions on commercial air travel, limitations on the travel and activity of diplomats and cultural or sports boycotts.<sup>65</sup>

The advantages of financial sanctions are many.<sup>66</sup> Financial sanctions such as freezing assets or banning investment can cause serious difficulties for targeted countries, especially among ruling elites, who have the capital. Because more focus is on the powerful and wealthy, financial sanctions put pressure on those responsible for the wrongdoing instead of on vulnerable populations. Furthermore, they minimise the short-term humanitarian and the long-term social costs for the people in a targeted country. This makes it more difficult for the targeted regime to mobilise nationalist opinion and rally domestic support, and to profit from sanctions through the control of the black market and the manipulation of humanitarian assistance.<sup>67</sup> It is also estimated that smart sanctions have the potential of a higher success rate (41%) than general trade sanctions (25%).<sup>68</sup> Most of all, smart sanctions have an enormous impact on the humanitarian consequences. For a targeted country's

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<sup>62</sup> Minear L et al (1999) *Toward More Humane and Effective Sanctions Management: Enhancing the Capacity of the United Nations System* p. XXVII-XXIX

<sup>63</sup> Lopez G A, Cortright D (1997) *Financial Sanctions: The Key to a Smart Sanctions Strategy*

<sup>64</sup> Brabant K V (1999) *Can Sanctions be Smarter? The Current Debate* p.18

<sup>65</sup> Lopez G A, Cortright D (1997) *Financial Sanctions: The Key to a Smart Sanctions Strategy*

<sup>66</sup> For further reading see for example Lopez, Brabant

<sup>67</sup> Brabant K V (1999) p. 4

<sup>68</sup> Of course, this numbers can be questioned, and as well it might be relevant to ask what they are based upon. Lopez G A, Cortright D (1997) *Financial Sanctions: The Key to a Smart Sanctions Strategy*

vulnerable population these sanctions are likely to be less severe than with traditional trade sanctions. This has important significance for the moral legitimacy and political effectiveness of sanctions, upon which in the words of Lopez and Cortright “greater political gain and less civilian pain can be achieved.”<sup>69</sup> An interesting and relevant question is; what happens if moral legitimacy and political effectiveness cannot be achieved simultaneously? Which is the main choice in that case? Must certain things or values be sacrificed in order to achieve effectiveness? Concerning the imposed sanctions in Iraq, the two criteria couldn’t be combined. A choice had to be made and moral legitimacy had to stand back for political effectiveness. Madeleine Albright<sup>70</sup> highlighted this issue when answering a question concerning civilian losses (half a million children had died by then) in Iraq. Her opinion is “I think this is a very hard choice, but the price – we think the price is worth it.”<sup>71</sup> Obviously, political effectiveness was prior one and moral legitimacy had to step back in order to highlight this. Mrs Albright’s attitude totally corresponds with the realist line, where interest comes before moral. Hopefully this schism between moral legitimacy and political effectiveness won’t be as prominent when smart sanctions are imposed.

#### **4.1 Smart Sanctions in Reality – the Case of Zimbabwe**

The 18 of February 2002, the European Union imposed restrictive measures (smart sanctions) against Zimbabwe. The reason for doing so is “... the recent escalations of violence and intimidation of political opponents and the harassments of the independent press ...” The Council has assessed that the Government of Zimbabwe “... continues to engage in serious violations of human rights and of the freedom of opinion, of association and of peaceful assembly ...”.<sup>72</sup> The Council thereby took restrictive measures towards Zimbabwe. The measures consist of the freezing of funds, financial assets or economic resources of individual members of the Government, and natural or legal persons associated with them. Furthermore, a ban on exports on repression equipment and a ban on technical advise, assistance or training related to military activities is required. The essential elements in this sanctions regime are a ban on arms sales, a blanket embargo on travel to Europe and a freeze on any assets in EU-based financial institutions that can be found.<sup>73</sup> In total, the imposed

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<sup>69</sup> Lopez G A, Cortright D (1997) *Financial Sanctions: The Key to a Smart Sanctions Strategy*

<sup>70</sup> She was the Permanent Representative of the USA to the UN and Security Council at this time

<sup>71</sup> An interview from 60 minutes, 12 May 1996. See also <http://members.aol.com/bblum6/albright.htm>

<sup>72</sup> EU doc EC No 310/2002

<sup>73</sup> EU doc EC No 310/2002

sanctions affect 20 persons, whereof 12 are ministers.<sup>74</sup> UK Foreign Secretary Jack Straw emphasised that the sanctions were designed to hit the political elite, not the economy because "... President Mugabe has done quite enough damage to the prosperity and economy of Zimbabwe without us adding to it."<sup>75</sup> Moreover, he highlighted that these smart or personal sanctions will not affect aid projects that are directed towards helping ordinary people.<sup>76</sup>

As mentioned earlier time is needed to facilitate a fruitful sanctions-evaluation. In the case of Zimbabwe more time has to pass by in order to be able to show the precise results of the imposed sanction. However, by comparing this sanction regime with the one in Iraq, it is possible to see advantages and disadvantages. From them we can calculate on the impact. 20 persons have been targeted in Zimbabwe, in a minimal way, in comparison with the Iraqi people. According to Article 4,<sup>77</sup> all targeted persons and their families will be able to continue to live their lives almost as normal. This is totally in line with human rights law. The question is; will they 'suffer' and be affected by the imposed sanctions? Not suffer in the same ways as the innocent civilians in Iraq, as that this is in opposition to prevailing humanitarian norms and values. They will not suffer in this way (which no person should need to do), and I don't think they will take much notice of the sanctions because these are too weak. The sanctions are not enough, they need to be refined, and the development of smart sanctions has evidently not reached its culmination yet.

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<sup>74</sup> EU doc EC No 310/2002 Annex I

<sup>75</sup> *Zimbabwe's anger over EU sanctions* (<http://www.cnn.com/2002/WORLD/africa/02/19/zimbabwe/index.html>)

<sup>76</sup> *EU slaps "Smart Sanctions" on Mugabe, Recalls Election Observers* (<http://allafrica.com/stories/200202190001.html>)

<sup>77</sup> See (EC) No 310/2002

## 5 Economic Sanction Develops to Smart Sanctions

### 5.1 Deathblow for Economic Sanctions?

The enthusiasm for economic sanctions has never been universal. Some have criticised them because they are *ineffective*, and some because they are *too* effective, and likely to have drastic consequences for innocent civilian populations.<sup>78</sup> Many objections to economic sanctions have been noted: sanctions tend to generalise war rather than to isolate it, it's difficult to define aggression, nations can seldom be pointed out as criminal etc. It has also been evident that economic sanctions are more likely to be imposed against weak countries rather than strong. Sanctions may also cause hatred and bitterness with immense consequences for the future.<sup>79</sup> To all these objections can be added the new approach; economic sanctions are likely to affect most heavily upon innocent civilian populations.

As we know by now, sanctions have been widely used over the last years and in accordance with the current debate they will continue to be a frequent instrument of foreign policy in a world of economic interdependence. It is obvious though that the practices and standards for their use, are in need of reform, and one step has been taken with the beginning development of smart sanctions. The new approach must be that sanctions should be understood as coercive tools, rather than punishment. They should as well be applied and designed to resolve conflict, not punish the civilian population.

According to Kofi Annan the record of the sanctions decade (1990s) has raised serious doubts about the effectiveness of sanctions, about their scope and severity when innocent civilians become victims of both their own government and of the international community.<sup>80</sup> The growing use of sanctions has been accompanied by an increased recognition of the moral dilemmas raised by such measures, both within the UN system, from humanitarian organisations and from NGOs. Former UN Secretary-General Boutros-Ghali captured the tension in his *Supplement to An Agenda for Peace* (1995). He noted that sanctions are a blunt instrument that inflict suffering on vulnerable groups, complicate the work of humanitarian agencies, cause long-term damage to the productive capacity of a targeted nation and generate severe effects on neighbouring countries. He pleaded for reforms in the implementation to minimise humanitarian suffering and for assistance for vulnerable

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<sup>78</sup> See Simons G (1999) Chapter 1 for this debate.

<sup>79</sup> Simons G (1999) p. 37ff

<sup>80</sup> See UN Press Release SG/SM/7360

populations, but he did not reject the use of sanctions. Further he called for new mechanisms to observe and assess sanctions impact, ensure the delivery of humanitarian assistance to vulnerable groups and to maximise the political impact of sanctions while minimising collateral damage.<sup>81</sup> Two Secretary-Generals have realised and highlight the importance of the unintended side-effects arising from economic sanctions. Both are concerned and wish to see a change into something new, since they are not ready to give up the concept of sanctions totally. The Security Council, the UN body in charge of decision and implementation concerning sanctions, agrees that something has to be done. The five permanent members of the Security Council addressed the humanitarian impact of sanctions:

While recognising the need to maintain the effectiveness of sanctions imposed in accordance with the Charter, further collective actions in the Security Council within the context of any future sanctions regime should be directed to minimise unintended adverse side-effects of sanctions on the most vulnerable segments of targeted countries.<sup>82</sup>

A wide spectrum of different other UN bodies have also raised their voices in the questions. WFP, has called economic sanctions a brutal instrument, while WHO has called for a banning of sanctions altogether.<sup>83</sup> UNICEF's opinion is that "The dilemmas posed by the imposition of sanctions call for an urgent review to ensure that vulnerable groups are protected and cushioned from the adverse effects of this double-edged instrument"<sup>84</sup>. The deathblow for a longer future of economic sanctions came in January 1997 when the General Assembly adopted its now-annual resolution denouncing economic sanctions as a method of exerting pressure on member states.<sup>85</sup> However, the most frequent opponents in the sanctions question are the humanitarian organisations. In a report from 1995, ICRC<sup>86</sup> brought to light that the imposed sanctions in Iraq, Haiti, Serbia and Montenegro only achieved minimal political results, while the inhabitants of the countries had to pay an extremely high price. They also emphasised that the delivery of humanitarian assistance was often affected.<sup>87</sup> Human agencies have faced serious difficulties in providing emergency relief assistance under sanction regimes such as in Iraq, Haiti and former Yugoslavia.<sup>88</sup> Sanctions are therefore according to the Red Cross, a contradictory measure. On one hand they are used in

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<sup>81</sup> Boutros Boutros-Ghali (1995) *Supplement to an Agenda for Peace* p 66-76

<sup>82</sup> UN res. S/1995/300

<sup>83</sup> O'Kane M(1996) *The Wake of War* p.134

<sup>84</sup> Winkler A (1999) p. 133

<sup>85</sup> UN doc A/RES/48/168

<sup>86</sup> The International Committee of the Red Cross

<sup>87</sup> Segall A (1999) *Economic Sanctions: legal and policy constraints*

<sup>88</sup> Bruderlein C (1998) *Coping with the Humanitarian Impact of Sanctions: An OCHA Perspective*

an attempt to promote peace and human rights, and on the other they undermine these rights, as the relief cannot always get through to the vulnerable. If the exposed cannot be helped, their basic rights are removed. During ICRCs conference in Geneva 1995, 138 states took a decision about the need to pay attention to the humanitarian consequences when taking decisions about economic sanctions.<sup>89</sup>

The conclusions are obvious. The UN considers sanctions necessary, they are seen as a relative peaceful alternative for the Security Council to maintain peace and stability, but at the same time they start to rise a critical voice. They have started to realise and emphasise the reverse of the medal, i.e. the humanitarian consequences. All UN bodies are aware that something has to be done; the sanctions need to be taken into another dimension and up to another level. Apparently there is a consensus in the sanctions debate; economic sanctions have outplayed their role. The United Nations is the main international body striving for the equality and development of all humans, and in order to stay trustworthy, they need to eliminate the humanitarian consequences when using this peaceful alternative in the future.

## **5.2 Humanitarian and Human Rights Principles as a Standard for the Implementation of Sanctions Regimes**

The use of sanctions raises many moral and legal issues. It has been argued that although sanctions certainly impose hardship on the people of a targeted nation, they are ethically justifiable only if they are carried out for a higher political and moral purpose, e.g. halting aggression or preventing repression. Ethical issues are complicated by the fact that at present sanctions have little or no base in the international humanitarian law or human rights law.<sup>90</sup> They fall into something of a grey area, where legal standards and guarantees have not yet been elaborated. The Geneva Convention from 1948 and its two additional protocols from 1977 are in force, since sanctions sometimes are imposed as a substitute to the use of armed force.<sup>91</sup> In compliance with the Geneva Conventions unnecessary suffering is prohibited and in all cases the civilian population should be spared from the effects of the sanctions with regard to its access to objects necessary to its survival.<sup>92</sup> In addition, sanctions authorities should allow and facilitate rapid and secure passage of humanitarian relief assistance in

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<sup>89</sup> 26<sup>th</sup> International Conference of the Red Cross and Red Crescent, *Resolution 4: Principles and action in international humanitarian assistance and protection*. 1995

<sup>90</sup> Minear L et al p. XXV

<sup>91</sup> The Geneva Convention consists of many different treaties. Here I refer to GCIV: *Convention IV Relative on the protection of Civilian Persons in Time of War*, and API, APII from 1977

<sup>92</sup> Article 54, al. 2 of Protocol I of the four Geneva Conventions

favour of the civilian population.<sup>93</sup> From the discussion above, it can be noted that this has not always been the case.

### **5.2.1 Jus Ad Bellum**

In order to capture the moral dilemmas and problems regarding sanctions, I'll highlight economic sanctions (in the light of Iraq) and smart sanctions (in the light of Zimbabwe) through the prism of the Just War doctrine.<sup>94</sup> Do these two kind of sanctions violate the Just War principles of *jus ad bellum* (justice to war) and *jus in bello* (justice in war)? The former requires that a belligerent party has valid ground for engaging in warfare and the latter requires that the war be fought in accordance with certain standards of conduct. To engage in warfare, the belligerent party must have a just case. A just case involves a real and certain danger such as protecting innocent life, preserving conditions necessary for decent human existence and securing basic human rights. Secondly, the inflicted damage must not be greater than the prevented damage. Finally, there must also be a possibility of success. This criterion prohibits a turn to force when and if the outcome will be futile.<sup>95</sup>

The interesting question now is whether the sanctions imposed in Iraq and Zimbabwe can be accused for violating the Just War principles of *jus ad bellum*. According to the first criterion, just case, both belligerent parties (UN & EU) have justification. Iraq invaded Kuwait; it was war. Accordingly the realist principles of sovereignty and non-intervention were exceeded. Innocent lives were in danger and basic human rights had to be protected. In Zimbabwe basic human rights had to be defended. It is a human right to have freedom of opinion, of association and of peaceful assembly, which were not the circumstances in their prevailing situation. The second criterion, inflicted damage, is not justifiable in the case of Iraq. The inflicted damage was huge. It has been estimated that the Iraqi invasion had a human cost that was far less than the casualties from sanctions. According to Weiss Kuwait had casualties of 20,000 both civilians and military.<sup>96</sup> The inflicted damage in Iraq has been enormous as explained in previous chapter. Consequently, the UN imposed economic sanction regime in Iraq violates this just war principle. However, with Zimbabwe on the other hand, it is too early to evaluate. More time is needed in order to notice all

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<sup>93</sup> Article 70 al.2 of Protocol I

<sup>94</sup> Just war doctrine deals with the justification of how and why wars are fought. The justification can be either theoretical or historical. The theoretical aspect is concerned with ethically justifying war and forms of warfare. The historical aspect deals with the historical body of rules or agreements applied, for ex. the Geneva and Hague Conventions.

<sup>95</sup> Gordon J (1999) *Economic Sanctions, Just War Doctrine and the "Fearful Spectacle of the Civilians Dead"* p. 388

<sup>96</sup> See Weiss et al (1997) p. 169

consequences. But what can be said is that this principle probably not will be violated. Why? The sanctions are imposed on 20 individuals whereupon the innocent civilians will not be affected at all. Or rather they cannot be affected. Since the sanctions are targeted it is not possible for them to reach the broad mass, therefore no damage is likely to arise. The third criterion is the probability of success. The sanctions against Iraq violate this principle. After 12 years of sanctions it is hard to see how it can be claimed that the sanctions are likely to succeed in achieving various changing in Iraq State polices, including the removal of mass destructive weapons and Saddam Hussein. In the case of Zimbabwe the election was conducted, however voices were raised concerning the way it was accomplished as not all citizens could vote. Furthermore, not all of the election observers were allowed into the country, and Swedish journalists were not allowed to report from the election.<sup>97</sup> Additionally, Mugabe enforced the so-called “*Access to Information and Protection of Privacy Bill*” after the election. This makes it illegal for domestic journalists to operate without governmental accreditation. Foreign correspondents are only allowed into the country in order to cover special events.<sup>98</sup> Evidently, the freedom of press and opinion is limited. The probability of success is not obvious. The political violence has worsened since Mugabe’s victory. There is a worsening situation of intimidation, forced displacement, violence and systematic torture as well.<sup>99</sup> The conclusion is that the sanctions don’t appear to be morally defensible in the ways they have been used against Iraq under the principles of *jus ad bellum*. The targeted sanctions against Zimbabwe are not totally moral defensible either under the principles of *jus ad bellum*, but to a wider content than against Iraq.

### 5.2.2 Prevailing Humanitarian Laws and their Influence upon the Two Study Cases

Before taking an interest in the other principle of the Just War doctrine, *jus in bello*, a run-through of the existing humanitarian laws and rules will be undertaken. The humanitarian right differ from the treaties of human rights in the sense that they are relevant in times of war, while human rights are relevant in times of peace.<sup>100</sup> The protection of civilians in times of conflict differs from the protection of civilians in times of peace. The international community has only scarce instruments to handle the new forms of war and conflicts, because the existing instruments are shaped to regulate international war and they are built upon the realist principles of sovereignty and non-intervention. The humanitarian right is

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<sup>97</sup> *Alla svenska journalister stoppas*, Göteborgs-Posten, 2002-02-18

<sup>98</sup> [www.misa.org](http://www.misa.org), New press bill passes in Zimbabwe, <http://www.dfn.org/focus/zimbabwe/infoaccessbill.htm>

<sup>99</sup> <http://www.cnn.com/2002/WORLD/africa/04/29/zimbabwe.violence.reut/index.html>

<sup>100</sup> Segall A (1999) *Economic Sanctions: legal and policy constraints*

therefore only partly applied, which is a restriction in the consideration of human rights. At the same time, the states of the world are well aware of the existing international norms which regulate their actions. But to re-quote Donnelly when he claims "... the still common scepticism towards international human rights ..." <sup>101</sup>. This might explain why the existing norms are not followed to its full extent.

Rules applied under international armed conflicts constitute restrictions against starving a civil population. "Starvation of civilians as a method of warfare is prohibited." <sup>102</sup> Civilians should not be deprived of resources necessary for their survival, hence it is forbidden to use blockades or embargoes or other forms of economic sanctions that can cause starvation among the civilian population. Sanctions regimes should not bring the standard of living for a significant part of the population below the subsistence level or deprive them of the basic human right to life and survival. This is not applicable in the Iraq case, since a significant part of the population suffered by reason due to the harsh sanction conditions. Human right instruments recognise the right to life, health and adequate standard of living including food, housing, medical care etc. These instruments impose on states an obligation towards fulfilling those rights, since they are ratified by the states. The most important provision regarding the right to food and freedom from hunger is Article 11 of ICESCR. <sup>103</sup> In its General Comment NO.8 on the relationship between economic sanctions and respect for ESCR, the committee highlighted the fact that states and organisations applying economic sanctions must always take full account of the provisions of the ICESCR. Attention should be focused on the impact of sanctions on vulnerable groups and that human rights protection must be incorporated into the design and monitoring of all sanctions regimes. <sup>104</sup> Neither Iraq nor the Security Council fulfilled these human rights. The Security Council made an attempt with its "*Oil for Food Programme*" 5 years after the sanctions were imposed. Resolution 986 established the programme in 1995, and it allows Iraq to sell unlimited quantities of oil on conditions that the proceeds are spent on food and medicines and other humanitarian goods. Iraq did not agree with the terms in the resolution, and it took until May 1996 before Iraq accepted the terms of conditions and resolution 986 was implemented. The *Oil for Food Programme* is still in force today. This programme was never meant to meet all the needs of

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<sup>101</sup> Donnelly J (1998) Human rights: a new standard of civilization? In *International Affairs* 74 (1998)

<sup>102</sup> Geneva Convention Protocol 1 Addition

<sup>103</sup> "The states Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to be continuous improvement of living conditions".

<sup>104</sup> UN Committee on Economic, Social and Cultural Rights: *The relationship between economic sanctions and respect for economic, social and cultural rights.*, E/C. 12/1997/8

the Iraqi people, which it didn't do either. Furthermore civilians do have a right to humanitarian assistance. This is applicable on free transportation of medicine, food, clothes or other articles necessary for survival.

In times of peace or non-armed conflicts different human rights conventions and treaties are applied.<sup>105</sup> These provide the right to life, health-care and a sufficient standard of living which includes food, clothes, a place to live, medical care, but even freedom from hunger. Above all, these treaties order the states to look to the fulfilment of these rights. From this point of view it is possible to emphasise that the Security Council ought to consider the international humanitarian laws and treaties and conventions concerning human rights when taking decisions about economic sanctions. Furthermore, the Security Council is obliged to provide for these rights if they use economic sanctions and this leads to consequences for peoples survival.<sup>106</sup>

### **5.2.3 Jus In Bello**

From the principle of *jus in bello* it is important to state that economic sanctions oppose the principle of civilians immunity, when one of the main principles of the *jus in bello* means that civilians should not be seen as legitimate targets for attacks.<sup>107</sup> Important is to emphasise that states imposing a sanction have a moral responsibility to protect the civilians in the targeted state.<sup>108</sup> If neglecting this responsibility they commit a crime both against human rights as they are outlined in different treaties and conventions and against international humanitarian practice and law. In the case of Zimbabwe these responsibilities are not neglected. This due to the very nature of the sanctions. If the sanctions are carried out in a correct way, civilians will not be affected at all, since it is only 20 individuals that have been targeted. *Jus in bello* gets another dimension if and when smart sanctions are imposed instead of economic sanctions. The primary principle of *jus in bello* is non-combatants immunity.<sup>109</sup> Non-combatants, i.e. civilians, do not pose a direct threat of harm and they are immune from attack. In the world of smart sanctions this is applicable because the leaders are the targeted persons – the combatant, and not the civilians. The meaning of *jus in bello* gets a significance because the fight can be fought on equal terms. The sanctioned persons in the targeted country participate in the war but only them, not the civilians. In Zimbabwe almost

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<sup>105</sup> For example, UDHR, ICCPR; ICESCR, Convention of the Rights of the Child

<sup>106</sup> Convention on the Prevention and Punishment of the Crime of Genocide (1948) art. I-III

<sup>107</sup> Winkler A (1999) p. 146

<sup>108</sup> Gordon J (1999) p. 388

<sup>109</sup> Gordon J (1999) p. 389

everybody can continue his normal live. The civilians will not suffer from example hunger, diseases or unemployment since the country is allowed to engage in world trade on normal conditions.<sup>110</sup> If the people should suffer it's not because of the sanctions, but because of other domestic reasons which the sanctions not intended to deal with. In this sense the 'war' is fought on equal terms. The international community, or the EU in this case, fight a 'war' against the source that breaks the established norms and codes of the international community, and might therefore control the impact of the non-combatants – the civilians. As a result the humanitarian consequences might not be as alarming as they are when traditional economic sanctions are imposed, which is exactly what all opponents of economic sanctions are striving for. Furthermore the states imposing sanctions have a moral responsibility to protect the civilians in the targeted state and in compliance with the principle of *jus in bello* this is possible to achieve when smart sanctions are imposed, but not in the case of economic sanctions.

### 5.3 Is There a Transition towards Smart Sanctions?

The proper question to ask is whether there is an ongoing transition towards smart sanctions or not? There are some examples up to date proving the tentative efforts to outline this new sanctions approach. EU has imposed smart sanctions twice, against Milosevic 1999<sup>111</sup> and now against Zimbabwe. UN has implemented them once, against the Taliban regime in Afghanistan 1999.<sup>112</sup> From these few examples I consider it possible to claim that there is a tendency to a transition towards smart sanctions in favour of economic sanctions. Does this transition originate only from the earlier experienced humanitarian impacts or might there be other hidden reasons as well?

When analysing the literature regarding economic sanctions from the Cold War and onwards, a striking feature is that the effectiveness of economic sanctions are evaluated in terms of political and economical effects on the targeted states. The humanitarian consequences are not really mentioned, rather the literature argues for economic sanctions on basis that these are seen as a lighter form of measure than military actions. Margaret P Doxey's study covers economic sanctions between 1966 and 1980 and compares these with economic warfare. She argues that they don't obtain the intended political effects.

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<sup>110</sup> Everything except equipment that might be used for internal repression is not allowed to import though. See Article 7 in EC No.310/2002

<sup>111</sup> Lopez G A, Cortright D (2000) *Toward Ethical Economic Sanctions*

<sup>112</sup> S/res/1267 (1999), S/res/1333 (2000)

Accordingly, she highlights that sanctions not are an efficient means in getting states to act in accordance with international law.<sup>113</sup> Hufbauer and Schott on the other hand consider economic sanctions to be efficient measures since they don't involve the costs that war cause in the form of military resources.<sup>114</sup> Renwick indicates that before implementing economic sanctions it must be determined whether it's possible to achieve the stated political and economical goals.<sup>115</sup> Peter Wallenstein shows in a survey of economic sanctions between 1933-65 that the sanctions were failures in general, because the sanctioned states politics did not change.<sup>116</sup> The earlier protests obviously depict economic sanctions as an inefficient mean striving to obtain political goals. It is apparent that sanctions didn't have the political or economical effects on the targeted states that were intended,<sup>117</sup> since the expected regime or policy changes didn't come true. This critique is still valid today, but now we have the humanitarian dimension as well. Repeatedly, it has been proven that sanctions are not only inefficient in order to obtain the stated goal, they are as well an efficient mean to damage the economical and social infrastructure and with that, the most vulnerable groups in the state are affected. The critics against economic sanctions and their humanitarian consequences have increased evidently during the 1990s. There are indicators showing that the international community is starting to take the humanitarian aspects in greater consideration. Consequently, it can be said that the transition is ongoing because of the immense humanitarian impacts economic sanctions have had. But naturally this cannot be the only reason.

I think the transition has somewhat of a multilateral character; a humane, an economic, effectiveness, a moral and an ideological one. According to Kofi Annan (among others) sanctions are still needed because they constitute an important instrument for the Security Council in their work of enforcing its decisions.<sup>118</sup> Moreover, sanctions allow the UN to respond to international threats of peace. They must have a policy option that is between military force and mere verbal condemnation. In this context, sanctions are of importance for the maintenance of international peace and security. But they have to be efficient in order to maintain their goals. In line with the current debate smart sanctions have a higher grade of

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<sup>113</sup> See Doxey M (1980) *Economic Sanctions and International Enforcement*

<sup>114</sup> See Hufbauer G C, Schott J J (1983) *Economic Sanctions in Support of Foreign Policy Goals*

<sup>115</sup> See Renwick R (1981) *Economic Sanctions*

<sup>116</sup> See Wallenstein P (1978) *Ekonomiska Sanktioner: En studie av 10 fall i modern tid*

<sup>117</sup> Only two sanctions imposed by the UN has reached its goal, South Africa and Rhodesia.

Smart Sanctions have been imposed by the EU on Milosevic during the Balkan war and they were efficient means in achieving its goals.

<sup>118</sup> UN Press release SG/sm/7360

compliance, wherefore this could be an argument or reason for the transition toward smart sanctions. They are more efficient and they constitute a good instrument for the UN as they don't involve the use arms. There is also another perspective, the efficiency contra human rights. As emphasised before, smart sanctions are more efficient both in terms of achieving goals<sup>119</sup> and of not violating HR. How soon the goals are achieved cannot be answered exactly at this point, but what's sure is that HR aren't violated to the same degree. Which criterion is the most important? I would claim that the efficiency criterion still is of greatest significance, but since the unpleasant HR side-effects are not of the same extent, it would be possible to state that efficiency contra HR not is of great importance when smart sanctions are imposed.

The development of the international economy plays a considerable role as well. In our contemporary world, the interdependence of the international economy is of uttermost significance for all countries. All countries rely heavily upon international trade to supply raw materials and technological resources. The total world export rate has increased from 135 billions in the 1960s to 3,94 trillions 1994.<sup>120</sup> As a result the dependence between the states have increased which makes the countries more vulnerable. When traditional economic sanctions are imposed they affect other countries economically besides the targeted one. Consequently, more than one country's economy will suffer. If one imposes a penalty one doesn't want to suffer from it self. With the development of smart sanctions it will be possible to hit just the root, whereupon the rest won't be affected. In this context it means that the sending countries and neighbouring countries economies won't be affected in the same sense as with economic sanctions. The anticipated result of the sanction emerges faster and likely it's superior as well.

A change in ideology might be another useful element to understand why there is a transition towards smart sanctions. First it concerns the idea of the sanction. Smart sanctions are not aimed at the state but at individuals. This is fascinating, because practically it's possible to target the state (the leaders are often equal to the state) without violating the principle of sovereignty, whereupon the sanctions can be considered to follow existing norms and rules. This was not possible before. The sanctions against Iraq did violate their sovereignty, since they were not allowed to engage in full trade with other countries, as well

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<sup>119</sup> See Lopez G A, Cortright D 1997, Lopez G A, Cortright D 2000

<sup>120</sup> Winkler A (1999) p. 137

they were prohibited to have full control over parts of their own territory (Kurd). As well they were not allowed to continue their development of mass destructive weapons. In the realist dominated era, almost all international efforts to apply economic sanctions in the name of human rights (for example) were met by some 'cheating' or 'sanction busting' in the strive for economic advantages.<sup>121</sup> Just in line with the realist theory. Selfishness and strive for power, are driving forces in realist dominated foreign policy. Accordingly, states didn't hesitate, but thought of their own interests rather than the common interests of the international community. If smart sanctions are imposed, this outcome will not occur. Countries are able to keep to their commitments since there are no chances to gain economically from the imposed sanction. As a result smart sanctions will function in a realist world. In addition, realist ideas and principles are starting to loosen its grip around states and their foreign policies,<sup>122</sup> in favour of liberal or rather neoliberal principles, where human rights have a higher priority. Liberalism emphasises attention to human rights and the individual is the basic unit, where realism emphasises attention on the state and security. Power and self-interest are the basic units. A way for realist states to extend or show off their power could be through economic sanctions. The exposed country will be economically powerless and consequently they are out of the game since participation in the world economy is of uttermost significance for a country. According to Forsythe neo-liberals might as well regard economic sanctions as mostly inadvisable, even though they might be useful in some cases – or maybe not. Evidently, their position is split. Furthermore, he argues that the liberal principles in international relations push the states to mix their self-interests with concerns about human rights,<sup>123</sup> whereupon smart sanctions seem preferable from a liberalist view. Neo-liberals emphasise that all states have a mutual interest and can gain from co-operation, and in the competitive world of today they seek to maximise the absolute gain through this co-operation.<sup>124</sup> When applied on sanctions it proves that smart sanctions are preferable, because it is possible to maximise the absolute gain through these. They hit the origin immediately. Furthermore, the liberal principles plead for the well being of the individuals why smart sanctions are to prefer in their view. Fewer people will feel and suffer from them.

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<sup>121</sup> Forsythe D (2000) p.8

<sup>122</sup> See Eide, Forsythe for this discussion

<sup>123</sup> Forsythe (2000) p. 229

<sup>124</sup> Dunne T *Liberalism* p.

The humane reason is another major cause for the transition, due to the rising significance of human right doctrines and awareness concerning our rights. There has been a handful of conferences aiming to discuss how to make the prevailing sanctions more humane and effective<sup>125</sup> and the result so far has seen considerable progress towards better sanctions. Another important factor is the communication revolution. 'Ordinary' people are able to follow and witness the effects and side effects of an imposed sanction through different means in a different way now, this due to the fast development of information technology. People are able to see and hear what happens, and the people of today have the possibility to question different actions and outcomes through new forums which didn't exist before. A fact is that one can be put on trial for committing genocides, war crimes or crimes against humanity in the International Criminal Courts. This was not possible a couple of years ago. It is, among others, both a sign of liberal values and a sign that we care about the well being of other people. This development within the human rights area makes it harder for the leading states of the world to conceal the consequences of their doings. A relevant question is whether the leading states are really interested in illustrating humanitarian catastrophes, or are media and NGOs forcing them to do so?

Moreover, we tend to be more cosmopolitan and globalised now compared to 10-15 years ago. People of today are more aware of what's happening in the world around us. Also they tend to have a different awareness. They tend take a definite stand position and be more active regarding humanitarian issues. The question is, is it possible to see the transition from economic sanctions towards smart sanctions, as a deeper change of value? This is a hard nut to crack, and it is not possible to give neither a positive nor a negative answer. The evident criticism against the use of economic sanctions and the recent use of smart sanctions might be an indicator showing that there is a greater awareness about the humanitarian consequences that economic sanctions can cause. Therefore, it would be possible, with some reservation, to state that there is a greater focus on economic, social and cultural rights, even though this focus is not clearly outspoken. A more interesting question is if the new awareness of the humanitarian consequences really includes a wider recognition of the economic, social and cultural rights? Or if this newly gained focus on humanitarian suffering actually is a way for the leading states of the world to conceal other hidden motives and interests?

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<sup>125</sup> For example, The Bonn-Berlin Process 2001, Two Expert Seminar on Targeting UN Financial Sanctions, Interlaken, 1998, 1999, Can Sanctions be smarter, ODI Conference 1998

The transition towards smart sanctions has been a slow and somewhat tentative process and it has not reached perfection yet. Due to today's imperfection, it's evident that they consist of some weak bricks. There seems to be some problems with these sanctions and it can be argued that the development of them is not completed, whereupon problems can arise. They need to be more sophisticated. If the current debate will continue it won't be long before better targeted smart sanctions emerge. In order to explain why the currently imposed smart sanctions not are perfect yet, let's take a look at the sanctions imposed against Zimbabwe. The imposed travel ban will not hit the sanctioned person hard, according to a CNN journalist, because Zanu-PF<sup>126</sup> members regularly commandeer Air Zimbabwe's six planes for personal trips, leaving passengers stranded. The travel ban is evidently useless. If they have access to aircrafts the sanctions won't hurt them. The targeted persons are not allowed to enter EU territories, which probably isn't a big problem for them. The freezing of financial assets might also be useless. Sources in Southern Africa, according to the same CNN journalist, suggest that most financial resources may have left Europe years ago if favour for South Africa and Mauritius. These are just two problems associated with smart sanctions. As time goes by surely more problems will arise. As emphasised before; smart sanctions are better, more efficient and above all more humanitarian than economic sanctions. It is important to highlight that these aim to hit the guilty people and not the innocent. It is also of importance that the international community is able to demonstrate that they know who is guilty and that certain types of conduct aren't tolerated if they don't correspond with international law and norms. But it is harder for these kinds of sanctions to hit the enemy when they are predictable. Smart sanctions need to be fast, extensive and have an accuracy of aim. This does not seem to be the case in Zimbabwe. To highlight this assertion I'll refer to Morgan Tsvangirai.<sup>127</sup> His reactions concerning the sanctions was that they were "*too little, too late*".

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<sup>126</sup> Zimbabwe National African Union Patriotic Front

<sup>127</sup> The opposition leader. Belongs to the party Movement for Democratic Change (MDC)

## 6 Human Rights in the Modern World – Two Different Perspectives

In the contemporary development, the widespread use of economic sanctions and the development of smart sanctions, highlight the beginning process of a wider recognition regarding human suffering. For many centuries the concerns about hunger, human dispersion and crimes against human rights have been of an internal concern for the states, just in line with the realist principles. Today human rights are no longer a matter just for the state, the state answers as well to the international community for their treatment of individuals. The most important concern for the state has been its own survival, not the rights of individuals. Following the realist line, nation states have striven to maintain and strengthen their own power and sovereignty. The national self-interest has efficiently prevented meaningful measures in order to handle crimes against human rights earlier. Realist tactics, such as policies of deterrence, have unfortunately not been unusual during the second part of the 19<sup>th</sup> century. As mentioned before, realists have dominated the 19<sup>th</sup> century, and they have been sceptical about international organisations and international law, due to the fact that it restricts the states sovereignty. Today these international organisations and international law are the most important instruments for the work in the name of human rights. Evidently, quite a few international organisations and a judicial framework have come into light, despite the realist's predictions. The end of the Cold War has however brought many attacks on realism as a model for explanation. Attempts have been made to reformulate it, in order to fit better into the new era. This because they have problems in explaining the origins of international organisations, non-governmental actors, international treaties, the dynamical global economy and the interest for international law. Realism should not be understated as a theory, since it still is of great value and influences countries foreign policies. The international political and economical structure influences the behaviour of the states, including their attitude towards human rights and economic sanctions. Consequently, the notions national power, sovereignty and national self-interest have developed and changed in order to fit into the new realities within the system. Former UN Secretary General Boutros Boutros-Ghali underlined that "the time of absolute an exclusive sovereignty ... has passed"<sup>128</sup> Javier Perez de Cuellar did also notice a change concerning sovereignty, he saw "an irresistible shift in public attitudes towards the belief that the

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<sup>128</sup> Forsythe D (2000) p. 21

defence of the oppressed in the name of morality should prevail over frontiers and legal documents”<sup>129</sup>

It is evident that the international system undergoes fundamental changes. For example, a changed division of power as a result of the end of the Cold War, an intensified globalisation, diffusion of democratic ideals and a communicative revolution. These different transformations change the political and economical environment, in which the states acts and it can force them to confront different types of crimes against HR. At the same time, these different processes might be something else; a possibility for different actors (states, individuals and organisations) which are strong advocates for HR, to use these forces in order to get states and international organisations to deal with the assaults. Not only through solving the immediate problems when they arise, but through a sweeping structural change.

During the 1990s, as highlighted in Chapter 5, the use of economic sanctions, and with that human rights abuses, have escalated dramatically. There might be three possible reasons for this according to Weiss.<sup>130</sup> As a result of the end of the Cold War, the states of today have a bigger interest in interfering in occurrences which earlier where considered to be states internal affairs. Economic sanctions might therefore be an indicator, among others, that the sovereignty notion is about to change. The states are withering away a bit and this paves way for intergovernmental organisations (IGO) such as the EU and the UN. In the name of human rights, this evolution is positive since IGOs often have extensive human rights programs. But on the other hand it is the state that ultimately approves treaties and monitors the programs, and therefore the state is needed. Secondly the security concept has been widening to contain socio-economic, environmental, humanitarian and military aspects. This means that the Security Council sees their mandates as increasing, whereupon they are able to act in questions which not were possible before, due to the firm principle of sovereignty. The last and maybe most important reason is that states are not willing to pay the costs that military intervention brings. Sanctions are therefore ideal to use when the world community or governments don't have significant interests in the targeted state. In the light of these three notions, realism is at its peak. These are the main pillars of classic realism and in situations were not fear, suspicion and classic security dilemmas prevail, nations behave in ways that realism cannot explain.

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<sup>129</sup> Forsythe D (2000) p. 21

<sup>130</sup> Weiss T G (1999) *Sanctions as a Foreign Policy Tool: Weighing Humanitarian Impulses* in Journal of Peace Research vol 36:5 p. 500

In contradiction to the realist view, another view has come into light during the 1990s, influenced by liberals. The essence is that the state is there for the welfare and well-being of the individual. There has been a row of initiatives from the UN, which have extended the space of international community, and the use of different methods has increased. Economic sanctions or rather smart sanctions, military and humanitarian intervention, in order to impede abuses against humans, are examples of these methods. These two new realities, the smart sanctions approach and the widespread humanism, rose mostly as a reaction against the Iraq invasion in Kuwait 1990 and the followed sanctions regime against Iraq.

Neo-liberals such as Robert Keohane and Joseph S. Nye introduced the concept interdependence and by that, they challenged the view of the world based on realist concepts. Interdependence emphasises that societies and states have become increasingly interlinked, which in turn changes the international and state structure. Interdependence rests on three propositions, where the first is, the idea about the state losing its dominant position in international relations to “non-state” actors and forces. Secondly, it’s highlighted that there no longer should exist a hierarchy of international issues, meaning that the so called “high-politics”, military and strategic affairs are, no longer at the top, with “low-politics”, such as economics and welfare issues, being further down. Further, the third aspect is that the military power is losing its salience in international relations.<sup>131</sup> Applied on human rights this neo-liberal view is interesting. If states are losing its position in favour for non-states actors, it could just have positive effects. The non-states actors are more active in their work for human rights. If these groups can be even more active, especially regarding ESCR, this could result in a wider achievement and recognition of the same. Further, if the hierarchy between “high-politics” and “low-politics” slowly erases, human rights might become more prominent. This would definitely give ESCR more esteem. When military power declines, there will be many advantages for human rights issues. It is a fact that third world countries import armaments from the rich producing countries. In order to be able to pay, agricultural products are exported. The balance between import and export is unequal, whereas this exchange is very destructive to the development of these countries. If (and when), more financial sources are available these means can be used in order to protect and gain human rights. As well, peoples right to life, housing, etc. might be easier to achieve if military power loosens its salience since arms easily destroy access to these means.

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<sup>131</sup> Halliday F (1994) *Rethinking International Relations* p. 14f

Evidently, a huge change has occurred. Prior the Cold War human rights were a national rather than an international matter. Today all states have to deal with internationally recognised human rights. The hard thing to understand is; why is it so difficult to advance human rights in practice in the international community? There is obvious a gap between the legal theory and the actual political behaviour. States practice liberalism and human rights at home and naturally states are more concerned with their national rights than international. But it seems like the liberal democracy tolerates international human rights practices they would not even consider accepting nationally. The 1990s has not been a golden era for the practice of liberal values concerning human rights. There are horrible examples, where Iraq, Bosnia, Rwanda, Somalia just are a few to be mentioned. Admittedly it is a countries sovereign right not to be scrutinised for different rights, but simultaneously states should recognise the hegemonic quality of the idea of HR. Is the blend of liberalism and realism – of universal concern and narrow self-interest – so hard to overcome? Despite the many international organisations and NGOs, it is still foreign policy that plays a large role in the promotion and protection of international human rights. It is a fact that international human rights law is based on liberal principles, but the practice of human rights all too often reflects a realist world. It might not be a coincident when realists emphasise “the evil nature of man”<sup>132</sup>. At the same time it is obvious that state interest rather than personal rights often prevails and that human rights are here to stay. But so is state sovereignty even though it’s starting to be transformed by the actions of IGOs and NGOs. The EU is a good example. Here it can be argued that the liberal principles of human rights can be effectively combined with the realist principle of state system. The states exist in meaningful ways and their national interests matter. But a view on protecting human rights is strong and also matters. Mostly it has been achieved through the supranational courts in Strasbourg or Luxembourg. I totally agree with Thomas Weiss when he emphasises “... as has been said of the UN, so it can be said of international HR standards; their purpose is not to get us to heaven, but to save us from hell.”<sup>133</sup>

The political debate surrounding human rights constitutes of questions such as *for whom should human rights apply, which rights are most important, who’s responsibility is it to provide for them, when should a right be supplied, how and to what extent?* The most important of all

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<sup>132</sup> Forsythe D (2000) p. 234

<sup>133</sup> Weiss et al (2000) *United Nations and changing world politics* p. 282

questions are *who should realise human rights?*<sup>134</sup> In the sphere of international law it's extremely hard to ensure that states live up to their commitments. Probably, this depends on the fact that states consider themselves to be sovereign and thus believe to have complete right of self-determination regarding questions they think about as internal policy questions. Vincent argues that state sovereignty and human rights limit each other's domains.<sup>135</sup> It might now be time to find the golden mean between these domains and try to find a system in which both can exist without preventing each other. Or to re-quote Kofi Annan "No government has the right to hide behind national sovereignty in order to violate human rights or fundamental freedoms for its people."<sup>136</sup>

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<sup>134</sup> Brown C (1999) p. 471

<sup>135</sup> Vincent J (1986) p. 131

<sup>136</sup> HDP 2000

## 7 Human Rights – Indivisibly and Interdependent?

A striking feature of UDHR is the balance between CPR and ESCR. Nothing suggests priority for one set of rights. UDHR does not make a distinction between them. Despite this evident balance, it's a commonplace of discussion that ESCR occupy a distinct second-class status. The relationship between CPR and ESCR, as mentioned before, was a matter of intense ideological controversy during the Cold War. The division between them is hard to erase, since CPR still is referred to as the main set of rights. In the academic world, the opinions regarding ESCR are also split up. Attracta Ingram argues for the legitimacy of economic and social rights in addition to civil and political rights. She emphasises the importance of the right to minimal standards of food, clothing, shelter, and health care.<sup>137</sup> Maurice Cranstone argues that human rights can only be civil-political, not socio-economic.<sup>138</sup> Jack Donnelly disagrees upon this and supports Ingram on the validity of economic and social rights.<sup>139</sup> Henry Shue and John Vincent argue for the primacy of subsistence rights (ESCR) over procedural rights (CPR).<sup>140</sup> Chris Brown captures the tension when writing, "Virtually everything encompassed by the notion of 'human rights' is the subject of controversy"<sup>141</sup>

The UN Committee on Economic, Social and Cultural rights are aware of the existing division and highlight the disparity between the two sets of rights:

The shocking reality...is that states and the international community as a whole continue to tolerate all too often breaches of economic, social and cultural right which, if they occurred in relation to civil and political rights, would provoke expressions of horror and outrage and would lead to concerted calls for immediate remedial action. In effect, despite the rhetoric, violations of civil and political rights continue to be treated as though they were far more serious, and more patently intolerable, than massive and direct denials of economic, social and cultural rights<sup>142</sup>

It's evident; the dividing line between the two sets still is valid in the contemporary world. This reality is somewhat peculiar. During the World Conference on HR in Vienna 1993, 171 states once again ratified "all human rights are universal, indivisible, interdependent, and

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<sup>137</sup> Attracta I (1994) *A Political Theory of Rights*

<sup>138</sup> Cranston M (1973) *What are human rights*

<sup>139</sup> Donnelly J (1989) *Universal Human Rights in Theory and Practice*, Donnelly J (1998) *Human Rights in International Relations*

<sup>140</sup> Shue H (1997) *Basic Rights: Subsistence, Affluence, and US Foreign Policy*; Vincent J (1986) *Human Rights and International Relations*

<sup>141</sup> Brown Chris (1999) "Universal Human Rights: A critique" in Dunne and Wheeler (ed) *Human Rights in Global Politics* p. 103

<sup>142</sup> UN doc. E/C.12/1992/2 p.

interrelated”<sup>143</sup>, even though it didn’t occur without controversy. China, among others, wanted the right of interpretation indifference from the western world, which emphasised universality. With support from the African states, the principle of universality got recognition. In addition, the west had to recognise and emphasise the right to development as a service in return. I consider this kind of horse-trading as a tragic phenomenon. The goal is not about spreading western values, but reaching agreements concerning certain basic human values such as the right to food, water, life and dignity etc. Nevertheless, the Vienna Declaration is important due to its strong emphasis on the inseparability and interdependence which is stronger than in previous documents. This is symbolic and demonstrates by that the occurred change in the traditional enumeration of human rights in categories. After the change it’s based on an alphabetical order: *Civil, Cultural, Economic, Political and Social Rights*<sup>144</sup>. Once again, we’re back to the original position of the UDHR, which didn’t place the rights into different categories, but treated them as a unity. 1998 was the year for the 50<sup>th</sup> celebration of UDHR. The theme was “*All Human Rights for All*”, which was a conscious strategy in order to call attention to “the universality, the indivisibility and the interrelationship of all human rights”<sup>145</sup>. Once again, this was an attempt to strengthen the idea of one set of rights, instead of the two sets which is the current case. For the full enjoyment of the notion *Human Rights*, both sets need to be seen as a package. Both sets are of equal importance, or to re-quote John Vincent “The right to subsistence (an economic and social right) ... is quite as important as the right to security (a civil and political right); starvation is quite as much a threat as violence.”<sup>146</sup> In order to reach the Article five utopia of the Vienna Declaration, a global change of attitude is needed.

### 7.1 Increased Esteem For Economic, Social, and Cultural Rights?

As argued before, the humanitarian consequences associated with economic sanctions, are one of the contributors (the most important) for a changeover to smart sanctions. The international community reacts against the way civilians in a target country suffer. The humanitarian consequences due to economic sanctions are, as noticed, frequently mentioned by different actors. Notable is that they are not frequently referred to as direct abuses on human rights, especially ECSR. What I mean is that it’s not possible to distinguish if these

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<sup>143</sup> Article 5, the Vienna Declaration

<sup>144</sup> Eide A (2000) Human rights in global politics p. 109 in *Human Rights: Concept and Standards (2000)*.

<sup>145</sup> Office of the High Commission for Human Rights, *The Universal Declaration of Human Rights: A Magna Charta for all humanity*

<sup>146</sup> Vincent J (1986) p. 12

actors place the humanitarian consequences on an equal footing with crimes against human rights. Thus there are a few examples where the effects from economic sanctions are discussed in a context where they are seen as a crime against human rights. The UN committee on Economic, Social and Cultural Rights, addresses the relationship between economic sanctions and respect for ESCR. They consider that states which are using economic sanctions need to take ICECSR into full consideration and vulnerable groups should be given extra concerns. Human rights should also be included in all forms of sanctions.<sup>147</sup> This is one of the few cases where ECSR are directly mentioned together with economic sanctions. Mostly it's about different statements or publications about humanitarian consequences.<sup>148</sup>

However, does this new humanitarian awareness originate in the assumption that the international community is starting to give ESCR increased value? According to Weiss et al, by 1996 there was some slightly renewed attention to socio-economic rights, along with the right to development.<sup>149</sup> A major reason for this renewed attention might be the flourishing of NGOs and their networks during the 1990s, rising from 26,300 (91) to 44,000 (99).<sup>150</sup> Some of these NGOs have taken a new course of action. The ones working for adequate food, clothing etc conducted on humanitarian reasons before, are now starting to be oriented towards HR programs<sup>151</sup>. If ESCR can be highlighted by different NGOs, it won't be long before the esteem regarding these rights will increase. Most important of all, more people will be able to enjoy them. A big step has already been taken by Amnesty International and their extended mandate, where ESCR are as important as CPR. I take it as a clear sign that the importance regarding ECSR will once again be renewed due to Amnesty's new standpoint. But, no matter how effective the NGOs might be in their will and concerns about ECSR, it's only governments that can end abuse of HR and create new laws that prevent abuse. Therefore the increased interest and esteem must infiltrate into the states. If not, changes won't occur.

Unfortunately this renewed interest in ESCR seems to remain mainly at the level of rhetoric. The international community shows a small tendency to implement and put ESCR into

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<sup>147</sup> UN Committee on Economic, Social and Cultural Rights General Comment NO. 8 *The relationship between economic sanctions and respect for economic, social and cultural rights*, E/C.12/1997/8

<sup>148</sup> See HR/4345, December 1997, E/C.12/1995/5 (1999),

<sup>149</sup> Weiss et al (2000) *United Nations and changing world politics* p. 183

<sup>150</sup> HDP 2000

<sup>151</sup> HDP 2000

effect, since this would require addressing the enormous and growing inequalities at all levels of the society, from local to global. In 1990 10% of the world's countries had ratified all six major HR instruments, and by 2000 this had increased to nearly half of the countries.<sup>152</sup> 137 states have ratified the ICESCR. ICESCR has been affirmed (or reaffirmed) during several world conferences.<sup>153</sup> Moreover it has been incorporated into the regional<sup>154</sup> and domestic law of many countries in the form of constitutional rights and national and local legislation.<sup>155</sup> Apparently though, signing a ratification of covenants is not the same thing as fidelity to them. If it was, ESCR should enjoy the same status as CPR and this discussion would be of no necessity. Almost all states accept ECSR in the abstract, but treat them, in the words of David Forsythe, "like stepchildren or poor cousins in practice".<sup>156</sup> In the legal aspect all governments are obligated to guarantee ESCR in accordance with prevailing HR laws. Obligated by virtue of having ratified specific treaties, and the others are also obligated to respect general principles of international law and HR. Consequently these states are bound to respect HR principles that are part of the customary law, i.e. law that has gained universal acceptance in the international community. UDHR is considered to be part of this, hence binding on all states whether or not they've ratified ICSECR. Additionally it is a states duty to afford a basic standard of living to its people, as it's outlined in UDHR article 22-7. Obviously, the states are not able to fulfil their commitments concerning ESCR. Why? Is it mere an economical question or are there other motives as well?

Back to the main question, why has not ESCR got increased esteem and why are they not seen as interdependent and interrelated with CPR? Some explaining factors might be that the modern HR-discourse has been influenced by the ideas of natural law and consequently also the civil and political rights.<sup>157</sup> Another factor is that few states have incorporated the Covenant of economic, social and cultural rights in their national constitutions, in contradiction to the civil and political rights, since these are said to be easier to guarantee. Accordingly this might explain why ESCR are not deeply rooted in the different states judicial principles. The question is if it's enough to incorporate these rights in the legislation.

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<sup>152</sup> HDP 2000

<sup>153</sup> For example Copenhagen (Social Development), Rome (Food Security)

<sup>154</sup> The EU recognises *the universality, indivisibility, interrelations and interdependence of all HR. Civil and political rights and economic, social and cultural rights are mutually reinforcing, share common pre-conditions and are based on common basic assumptions and principles*. At the Millennium Summit, the EU expressed its willingness to support any initiative of the UNHCHR for HR aimed at achieving the universal enjoyment of economic, social and cultural rights

<sup>155</sup> ECSR 4freedom

<sup>156</sup> Forsythe D

<sup>157</sup> Gomes Mario 160ff

These rights must be implemented into the economic policy as well, in order to have a possibility to be achieved. Additionally, there's a conceptual clarity missing relating to the socio-economic rights. They are often understood to be more vague and indistinct than CPR. The process of clarifying the contents of these rights and their corresponding obligations has been a slow and it's still ongoing. As well, it is stated that these rights should be realised gradually, which gives opportunity to interpret in a suitable way for all countries. It is, however, important to remember that taking ESCR seriously implies approaching the question of income distribution, solidarity and equality. Is man of today ready to do so, or has the capitalistic system everybody in a firm grip, wherefore these obstacles are hard to overcome?

The ideological debate between the two Cold War powers (as shown in chapter 2) and now between South and North, has obviously affected and impeded the development of these rights as well. Earlier it was held that socio-economic rights needed a strong state and powerful acting from the state in order to get realised. This might not be so any longer. According to Asbjørn Eide, the role of the state today is in decline, due to the process of globalisation, disintegration and trends towards anarchy. Instead he argues the idea is to rely on the market to resolve problems of human welfare.<sup>158</sup> Thereby it is no longer taken for granted that the realisation of the ESCR depends on action by the state, even though the state still remains responsible for guaranteeing these rights. If the state is weak or weakening it may not be able to perform its role in fulfilling its obligations towards its citizens. Consequently, people might not enjoy their ESCR wherefore they will not achieve the same esteem as CPR. I claim it is important to remember that there is no hierarchy of human rights. People cannot advance their ECSR without the political space and freedom to do so. A consciousness in the international community is emerging, where the realisation of human rights is dependent of a view, where the rights are seen as dependent and indivisibly of each other. There are so many occasions in peoples life where they need civil and political rights in order to claim economic, social and cultural ones, and vice versa. It is important we defend all of them.

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<sup>158</sup> Eide A (2000) p. 158

## 8 Conclusions

From the conducted discussion it is possible to state that a transition or development from economic sanctions towards smart sanctions have occurred. This far, three smart sanctions regimes have been imposed, and more are likely to come. The transition has a multilateral character, where the most important cause for this development is the concern about humanitarian suffering. Above all, it seems like the need for sanctions always will be present in international society. Presumably, these sanctions will be the melody of the future, but in order to be really efficient, smart sanctions need to develop further.

The hard question to answer is whether the transition towards smart sanctions has lead to an increased esteem for ESCR and change of value in the human rights area. The indivisibility and interdependence between the two sets of rights have been emphasised and re-emphasised several times during several occasions. But it seems to stop there. As to now there has not been an increased respect, but it's on its way. Efforts are made from the UN to highlight ESCR, and more and more NGOs have become more active regarding these rights. A huge step has been taken by Amnesty International's extended mandate, and I consider it possible to believe in a brighter future for these rights. Furthermore, in the dialectical clash between realist and liberalism, questions of human rights will remain central. Without no doubt new human right norms will be adopted and new significance will be given to the already existing documents and treaties, as new threats to human dignity will emerge.

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