

Opinion

Sanctions and Human Rights

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In a recent seminar in New Delhi, the Secretary-General of the United Nations Council for Trade and Development (UNCTAD), Mr. Rubens Ricupero, said post-nuclear test economic sanctions against India were “national measures” taken by individual countries in keeping with their points of view. According to him, UN organisations did not have anything to do with the sanctions. This position is evasive which the UN cannot afford to pursue if it wants to maintain its credibility as it seeks to side-step a fundamental question of legal principle: whether the member-states, which are bound by the treaties and conventions of the UN and its organisations, can resort to these instruments partially, according to their convenience? The impact of the economic sanctions, although imposed by individual countries, on the human (economic, social, cultural and political) rights situation in the affected country is an important issue, which deserves the urgent attention of the UN.

The imposition of sanctions has been a routine affair at the international and regional levels since the Cold War times. The United States leads the world in imposing sanctions and even its President, Mr. Bill Clinton, recently acknowledged that the US had become “sanctions happy”. Drawing the inspiration from Woodrow Wilson’s declaration in 1919 that “apply this economic, peaceful silent, deadly remedy and there will be no need for force”, the US has subjected 73 nations and over half the world’s population to sanctions. India and Pakistan are the latest. Be that as it may, the UN owes it to the international community to define its positions in so far as the sanctions impinge on the human rights of individuals. Whether the sanctions are imposed in accordance with Chapter VII of the UN charter or by the individual countries is not the issue. The issue is whether such imposition overrides the provisions of the UN Charter relating to Human Rights under Articles 1, 55 and 56.

Sanctions may be studied in relations to their immediate impact on the social development and the economic sphere of the affected country. In the former, they have a disastrous impact on the social services sector, viz., health services including the supply and distribution of pharmaceuticals, disruption in education systems at various levels, supply of pure drinking water and housing. The sanctions against Iraq illustrate such consequences.

The second implication pertains to the economic sector, involving trade and commercial relations. It is generally believed that economic sanctions have little implications for the social sector. The argument is fallacious. It is borne out by the studies conducted by the UN itself that even these types of sanctions adversely affected the people at the social level, particularly the vulnerable groups. The impositions of economic sanctions, as the UN studies reveal, invariably results in the emergence of black market, illicit trade and corruption. The infrastructural initiatives too do not

remain unaffected. The most alarming impact is that the sanctions seem to scuttle the functioning of the democratic institutions. The imposition of emergency suspending the fundamental rights in Pakistan provides an illustration.

The UN has not been quite insensitive to the sufferings of the common man, particularly the vulnerable groups of the targeted countries, as a consequence of the sanctions imposed. Thus, the Security Council has established a sanctions regime, which advocates humanitarian exemptions, aimed at permitting the flow of essential goods and services. The Secretary-General proposed to formally assess the impact of sanctions and relief provided by the exemptions, and enlarge the scope of humanitarian assistance. In 1996, Ms. Graca Machel, who prepared a major study on the impact of the armed conflict on children for the UN General Assembly, concluded that “humanitarian exemptions tend to be ambiguous and are interpreted arbitrarily and inconsistently.” This indictment of an impartial analyst indicates that the rationale of sanctions is not always to persuade the specific countries to conform to international law or to keep in view the national measures of the sanctioning country.

The forgoing discussion still does not address the issue: whether the sanctions render the human rights as reflected in the human rights treaties and the Universal Declaration of Human Rights inoperative? The UN Committee on Economic, Social and Cultural Rights in its 17th Session (Nov. 17-Dec. 5, 1997) conclude:

“The Committee considers that the provisions of the Covenant, virtually all of which are also reflected in a range of other human rights treaties as well as the Universal Declaration of Human Rights; cannot be considered to be inoperative, or in any way inapplicable, solely because a decision has been taken that considerations of international peace and security warrant the imposition of sanctions.”

Thus, it is evident that sanctions imposed in accordance with Chapter VII of the UN Charter do not override the provisions that relate to human rights under Articles 1, 55 and 56. In fact, all these provisions draw their strength from the very same Charter. The same principle is applicable to individual sanctioning states unless they decide to opt out of the UN. The Committee on Economic, Social and Cultural Rights concluded its report with the remark that “the inhabitants of a given country do not forfeit their basic economic, social and cultural rights by virtue of any determination that their leaders have violated norms relating to international peace and security.”

The committee has given its report in the form of a comment (general comment no.8). By its own admission, the committee has no role to play in relations to decisions to impose or not to impose sanctions. However, it observes that it owes it to the international community to monitor compliance by all states, which are parties to the Covenant on Human Rights. It is ironical that most of these states, whether they are suffering the sanctions or not, have not considered this important human rights dimension of the sanctions.

The impositions of sanctions inevitably undermine the economic, social and cultural rights of the individuals and groups in society. The humanitarian exemption under the Security Council sanctions regime is flawed. This assumption could be strengthened by providing data, based on case studies which could prove useful to the UN bodies in devising appropriate mechanisms for

dealing with sanctions which result in the undermining of human rights. Unfortunately, the states, which are under sanctions, are reluctant to undertake this task out of domestic political compulsions.

India and Pakistan, which are under sanctions from individual countries, should undertake this task. Having recovered from the hiccups of the reactions to their nuclear explosions, they should concentrate on this task which will affect millions of their peoples. Selling of official palatial buildings and seeking financial assistance from brothers-in-faith (in case of Pakistan) or the urgent missions of barons of industries (the CII President's whirlwind tour of the US and the UK) may not yield the desired results in view of the strategic complexities of the situation.

It is equally important to involve the UN in dealing with the situations where administrative processes are fiddled with a circumvent the threat of sanctions. The testimony of Mr. Gary Milhollin, Director, Wisconsin Project on Nuclear Arms Control, before the Committees on international Relations and National Security, US House of Representatives, is quite revealing. He asserted that the administration's decision transferring control over satellite exports from the State Department to the Commerce Department removed the teeth from any future US sanctions against Chinese companies guilty of missile proliferation. He said implementation of the US statutes that required imposition of sanctions against the Chinese companies guilty of missile proliferation was suspended without any legal basis. Mr. Milhollin's testimony has raised the larger issue of political and strategic use of sanctions. Even if individual countries make the plea that the sanctions are imposed in pursuance of their "national measures", their measures will still come within the ambit of scrutiny of the human rights regime.