

# Economic sanctions, healthcare and the right to health

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## THE RATIONALE OF SANCTIONS

Sanctions have become an increasingly used tool in national and international foreign policy to induce policy change in sanctioned states, either by applying indirect pressure on their governments to change their policies by targeting important business sectors or the economy at large<sup>1</sup> or by impacting influential politicians and businessmen, as in the recent example of Western sanctions on Russia following the 2014 annexation of Crimea and the 2022 invasion of mainland Ukraine.<sup>2</sup> Economic sanctions can be designed to aim at a variety of goals, such as resolving armed conflicts, countering terrorism or signalling opposition to non-constitutional changes of a country's government.<sup>3</sup> In the recent case of sanctions against Russia, sanctions were set in place with the hope of halting the Russian invasion of Ukraine and to induce the Kremlin to reconsider its aggressive behaviour. The effectiveness of sanctions can be greatly increased if they are imposed by regional governmental organisations such as the EU or by international bodies, notably the United Nations (UN) Security Council.<sup>4</sup> Over the past decades, institutions have become ever more aware of the rights of the populations of the sanctioned states.<sup>5</sup> It is generally recognised that sanctions should be designed to be effective in a targeted way. While a certain degree of hardship inflicted on the population is in general unavoidable, this should not be the primary aim of sanctions. This means that sanctions should target regimes rather than people, avoiding civilian harm and human rights violations.<sup>6</sup> In the words of Kofi Annan, former Secretary General of the UN: '[J]ust as we recognise the importance of sanctions as a way of compelling compliance with the will of the international community, we also recognise that sanctions remain a blunt instrument, which hurt large numbers of people who are not their primary targets. Furthermore, sanctions need refining if they are to be seen as more than a fig leaf in the future.'<sup>7</sup>

## Summary box

- ⇒ Sanctions are increasingly used by national states and the international community to put economic and political pressure on target countries, with the aim of effecting a shift in foreign or internal policies.
- ⇒ In this paper, we argue that sanctions should never be imposed on healthcare products—diagnostic, curative or preventive—or on any other good or service that can be reasonably expected to entail direct negative consequences on access to healthcare in the sanctioned state.
- ⇒ In addition, we propose the establishment of a supranational task force to review and monitor sanctions to ensure they do not violate the right to health, or to mandate existing organisations to monitor the effects sanctions have on healthcare systems.
- ⇒ We discuss these issues considering key ethical and human rights aspects, including justice, vulnerability, proportionality and responsibility.
- ⇒ We discuss how responsibility should be shared between states or organisations imposing the sanctions, and states targeted by sanctions.
- ⇒ Sanctioned states should make efforts to mitigate effects of economic sanctions by prioritising spending in the interest of their citizens' health.

That said, it is important to consider that UN targeted sanctions, which are packages of sanctions imposed by the UN Security Council, have been successful in leading to intended policy change only 10% of the times, and limited the policies they intended to change in 28% of cases,<sup>4</sup> but led to a reduced life expectancy in the targeted countries by 1.2–1.4 years.<sup>8</sup> Economic sanctions have also been criticised for the potential collateral damage to third states they can cause. For instance, the African Union has criticised the exclusion of Russian banks from the Swift payment system since this might seriously disrupt global food supply chains.<sup>9</sup> For this reason, some authors suggest that economic sanctions should be banned, as they are having detrimental effects on health and nutrition of civilians.<sup>10</sup>



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Unilateral sanctions, which are sanctions imposed by (groups of) states and not by the UN Security Council, are particularly controversial. In 2002 and 2014, the UN General Assembly and the UN Human Rights Council have adopted resolutions condemning unilateral sanctions.<sup>11 12</sup> The resolution of the Human Rights Council argues that unilateral sanctions violate the international law principles of sovereignty of states and multilateral dispute resolution (through the UN), negatively impact the realisation of the ‘right to life, the rights to health and medical care, the right to freedom from hunger and the right to an adequate standard of living, food, education, work and housing’ and cause ‘disproportionate and indiscriminate human costs [...] on the civilian population, in particular women and children, of targeted States’.<sup>12</sup> Unilateral sanctions have also been criticised for being disproportionately imposed on low-income and middle-income countries by wealthier countries, for example, by the Kenyan representative in a Security Council debate on sanctions on 7 February 2022: ‘The frequency and reach of unilateral sanctions have led to a growing view that they are the weapons of the strong against the vulnerable or weak’.<sup>13</sup>

### SANCTIONS AND THE RIGHT TO HEALTH

From an ethical point of view, it is a key question to define which sanctions are morally justifiable under what circumstances. Sanctions undermining the right to health—by impeding access to healthcare services, including diagnostics, curative and preventive medicines, vaccines as well as medical devices, medical supplies and medicines used in emergency rooms or even raw materials needed to fabricate medical products—are particularly sensitive in this regard. In this analysis article, we focus on healthcare, but it is clear that sanctions affecting nutrition (ie, sanctions which target food supplies) also undermine the right to health of targeted populations.<sup>14</sup>

Yale Management Professor Jeffrey Sonnenfeld and Steven Tian have recently reproached several pharmaceutical companies for continuing their businesses in Russia and claiming their accountability for favouring Russia’s aggression against Ukraine.<sup>15 16</sup> As the war by Russia against Ukraine continues, it is likely that there will be calls for the use of the tightest possible sanctions, including sanctions on healthcare products, in the near future.

In this context, we ought to remember that national states all have a shared responsibility, in their capacity as members of the UN, to ensure global access to healthcare and the right to health.<sup>17</sup> The Universal Declaration of Human Rights, in its first article, states that ‘all human beings are [...] equal in dignity and rights’, which includes the right to health. Article 25 specifies that ‘everyone has the right to [...] health and well-being [...] including medical care’.<sup>18</sup> Similarly, in the UN Convention on the Rights of the Child, article 24 states that ‘state parties recognize the right of the child to [...] the

highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. State parties shall strive to ensure that no child is deprived of his or her right of access to such health care services’.<sup>19</sup> As explained by the General Comment No.14 of the UN Committee on Economic, Social and Cultural Rights (CESCR) on the right to the highest attainable standard of health, the right to health is a fundamental human right which is necessary for all other human rights to exist and be exercised.<sup>20</sup> The use of sanctions designed to hurt a country’s healthcare sector is clearly incompatible with respecting citizens’ right to health. Accordingly, the general comment No. 14 of the CESCR calls on states to refrain ‘at all times’ from sanctions on medicines and medical equipment.<sup>19</sup> However, sanctions on other healthcare products and, in fact, other non-healthcare products may as well interfere with the right to health, and, thus, need to be subject to scrutiny.

### SANCTIONS AND HEALTHCARE: ETHICAL PRINCIPLES

Health is a fundamental human right. Besides the right to health, the ethical principle of *justice* implies that access to equitable and affordable healthcare should always be guaranteed, regardless of who is the person in need and where this person comes from.<sup>21</sup> Access to healthcare services is considered of particular moral relevance as a prerequisite for equality of opportunity<sup>22</sup>; it is equitable when it covers individual needs<sup>23</sup> and when there are no unfair, avoidable or remediable health disparities among groups of people.<sup>24</sup> Historical examples show that sanctions can have a direct impact on equitable access to healthcare services. In Iran, for instance, raw materials needed to produce medicines in the country could not be easily imported due to restrictions imposed on the Iranian banking sector,<sup>25</sup> and during the COVID-19 pandemic, the effect of sanctions on Iran has been exacerbated, highlighting how public health emergencies can amplify the damages on healthcare caused by sanctions.<sup>25</sup> Sanctions aimed at non-health sectors can also indirectly impact access to healthcare if the sanctioned state reduces the funds allocated to healthcare to ensure other activities keep taking place, including military activities,<sup>26 27</sup> raising complex questions about responsibility for harm to the civilian population of the sanctioned state and the role of humanitarian exemptions or aid in combination with sanctions.

Another important concept is *vulnerability*, which in the context of health is defined as an increased risk of being exposed to disease and death, due to decreased protection<sup>28 29</sup>; for example, vulnerable people are children, refugees and displaced persons as well as immunocompromised individuals and patients with chronic diseases, particularly during a pandemic; cancer patients, especially when advanced cures and support are lacking; or even potential cancer patients, who may have genetic susceptibility and may be particularly vulnerable when screening and preventive measures are not offered. In

general, vulnerable individuals are those having reduced chances of receiving healthcare assistance, and in sanctioned countries, a decreased protection and access to healthcare can occur because of scarcity of medical equipment and resources, increased costs of raw materials—as it was the case for Iran—as well as that of energy sources needed to operate medical devices and run hospitals.<sup>30</sup> Therefore, vulnerability in healthcare should be considered when drafting and reviewing international sanctions.<sup>30 31</sup>

The principle of *proportionality* also plays a relevant role. Measures that consider the principle of proportionality are taken in a context of scarcity of resources, in which the benefits and risks should be weighed to consider the best possible course of action.<sup>32</sup> With the implementation of sanctions, there is a necessity to evaluate proportionality: benefits and costs for global economy, considering modern global interconnectedness of trade and commerce, must be considered; sanctioning countries must weigh and compare the cost/benefit profile of sanctions.<sup>30</sup> We propose that sanctions impacting the healthcare sector are not proportionate, as they hurt vulnerable citizens requiring access to healthcare, and are not likely to cause desired policy changes, as government officials and wealthy individuals are nonetheless likely to enjoy adequate medical care. There is a relevant intersection between vulnerability and proportionality, since proportionate measures consider vulnerability, but disproportionate measures do not. As for sanctioning states, proportionality should be a guiding principle for sanctioned states, too, as access to healthcare and the right to health should be guaranteed despite a decrease in available resources.

### RESPONSIBILITY FOR SANCTIONS AFFECTING HEALTHCARE

There needs to be a shared responsibility between the sanctioning and sanctioned states, both of which should respect the right to health of all citizens, irrespective of which side of the sanctions they are on. Sanctioning states are responsible for designing sanctions that do not impact, directly or indirectly, the healthcare sector of the targeted country, which would otherwise damage vulnerable people and would create or exacerbate pre-existing health disparities. On the other side, sanctioned states should ensure that sufficient resources (providing such resources are indeed available) are allocated to their healthcare sector, which should remain of the highest priority even when under the economic pressure of international sanctions. In this latter case, sanctioned governments are responsible for the well-being of their citizens and should reallocate resources from unnecessary expenditures. The case of sanctions on Iraq (1990–2003) following Iraq's invasion of Kuwait in 1990 provides an example of the potential damage caused by international sanctions on the healthcare sector and a lack of respect for the right to health not only by the sanctioned state but also by the sanctioning states. Sanctioning states

devastated the healthcare sector in Iraq, placing embargoes on vital medicines and leading to a substantial increase in children's mortality and general decrease in life expectancy.<sup>33</sup> At the same time, state funding for healthcare remained extremely low, only 2.8% of the gross domestic product, versus 8.4% in 2009 after sanctions were removed, meaning that the Iraqi regime had neglected its citizens' right to health.<sup>34</sup>

### IMPLEMENTING A REVIEWING SYSTEM FOR SANCTIONS

Based on the aforementioned human rights and ethical principles, there is a clear threshold international sanctions should not surpass. All medical products should be exempted from sanctions, including those that could be labelled as less relevant or not lifesaving (eg, cosmetics, dietary supplements, etc), else this may potentially lead to a debate with no feasible conclusion nor reachable consensus, and an open door for sanctions impacting the healthcare sector. Obviously, the lack of other, non-medical goods can also affect people's access to healthcare as well as their health more generally,<sup>35 36</sup> particularly if a comprehensive, biopsychosocial concept of health is assumed, as in the WHO constitution.<sup>37</sup> Therefore, we suggest refraining from sanctioning any good or service that can be reasonably expected to entail direct negative consequences on access to healthcare in the sanctioned state. Since ethically reflected decision-making processes in combination with an evidence-based review of effectiveness and unintended effects are needed,<sup>38</sup> in addition, we propose the establishment of a task force, possibly coordinated by existing supranational institutions, to review and monitor sanctions to ensure they do not violate the right to health.

Implementing a reviewing and monitoring system for international sanctions is a complex challenge, and there is currently no international institution in charge of this specific task. Existing mechanisms that could potentially review international sanctions are the Universal Periodic Review by the UN Human Rights Council, which reviews human right records of UN member states,<sup>39</sup> and the UN Treaty Bodies, which monitor the implementation of international human right treaties in signatory parties.<sup>40</sup> These include notably the CESCR, whose function is to monitor the implementation of the International Covenant on Economic, Social and Cultural Rights, including the right to health, food, water and sanitation<sup>41</sup>; the UN Committee on the Rights of the Child, which monitors the implementation of the Convention on the Rights of the Child<sup>42</sup>; and the Committee on the Elimination of Discrimination against Women (CEDAW), which monitors for 'discrimination against women in the field of healthcare', as stated in article 12 of the convention.<sup>43</sup> However, all these mechanisms focus on human rights in general, but not specifically on the right to health. We propose the formation of an international taskforce with expertise in public health and economic sanctions,

such as a joint committee of the WHO, the International Committee of the Red Cross and the World Bank.

## EFFECTIVE AND TARGETED: SANCTIONS MUST RESPECT THE RIGHT TO HEALTH

Based on the ethical and human right principles discussed in this paper, we urge the international community to work towards a consensus on the necessity of avoiding economic sanctions that violate the right to health of the people living in sanctioned countries. Recognising that access to healthcare is an important but certainly not the only prerequisite for health, we suggest (a) a ban on sanctions that either directly impede access to healthcare by preventing trade of medical products, reagents and raw materials or indirectly significantly harm access to healthcare in the sanctioned country and (b) a task force/joint committee composed of supranational institutions to review and monitor sanctions and to ensure they do not violate the right to health. An ethical framework for evaluating sanctions with a view to their health impact would be an urgently needed basis for the operation of such a body.

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