The Role of International Sanctions on Legal Obligations

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ABSTRACT
Sanctions are coercive measures taken against a state which has committed an international illegal act or has seriously breached an international rule or obligation, by a state or a group of states or decided by an international organization. The sanctions and countermeasures are a form of coercion for the guilty state. Constraint is traditionally regarded as one of the leading problems in the international law. With reference to the lack of a centralized apparatus of coercion, many thinkers denied the legal nature of the liability law, giving it the character of a positive moral. In fact, coercion plays an important role in the functioning of international law and is one of the characteristic features of the operating mechanism. Constraint as part of the method of operation of the international law is not a violation, but a means of achieving the right. The basic element of coercion is legality, including in terms of foundation, method and volume. Constraint is primarily determined by the goals and principles of international law. Countermeasures are limited by the temporary failure on the part of the injured state towards the guilty state and they are considered legal until they have reached their purpose. They should be applied in such a way to allow restoration of the application of the violated obligations. This rule relates to the 1969 Vienna Convention on the law of treaties, according to which "during the period of suspension, the parties shall refrain from any acts which would tend to prevent the resumption of the treaty.

INTRODUCTION

An essential component of international law is represented by the defining and demarcation of international responsibility for those actions that are likely to endanger international peace and security, to create a tense climate that determines the use of force or to generate military conflicts and confrontations. Unfortunately for the international community, such events still take place in 21st century and for example, we mention the recent conflict between Syria and Turkey, or the conflicts in Egypt, Libya and Tunisia. The responsibility for such illegal acts must clearly be established in the norms of international law to highlight the preventive function of international responsibility and to ensure the international peace and security [1].

The war of aggression was considered for a long time an illegal act and therefore not being incriminated, there is no liability for such actions that intended to start and wage the war. It is well known in the history of international relations that stronger and better armed states ask brought the weak states to book for, by virtue of the winner’s right to impose to the defeated state its conditions. The war of aggression was considered a lawful way of resolving conflicts between states and the so-called responsibility was made on the right of the strongest state. Because the international obligations were frequently violated, war was considered a means of conquest and oppression of other peoples, which was available for the powerful states, eager for expansion. Such a conduct embodied the breach of fundamental principles of international law such as: the sovereign equality of rights, non-aggression, the peaceful resolution of international disputes, cooperation and mutual respect in interstate relations, which led to the imposition of strict liability of the aggressor for his actions of threatening or breaching the peace and security or the instigation and starting the war.

Thus, the establishment of international responsibility and of some exact sanctions enshrined in the international law, to punish the guilty of violating the international obligations stipulated in the international treaties, appeared as imperative. This responsibility refers to the obligation of the aggressor state to support in various forms the consequences of its criminal acts "which can range from the coverage of material damage, up to the most rigorous sanctions permitted by the international law". The attempts to find an international balance, some viable solutions for maintaining peace and security in the world have echoed in the doctrinal works of...
international law, but also in a series of debates on the subject. For example, The Conference for Security and Cooperation in Europe, where there was argued the need for sanctions against those who violate international norms and obligations and the rules of good coexistence, based on the fact that no state wants a military confrontation. To design effective actions against the war of aggression there should be stipulated responsibilities of the guilty and the sanctions imposed to punish them, in a clear and precise form, in order to highlight the preventive function of international responsibility. The crucial role in clarifying these issues comes to the coding of responsibility in the international law by the determination of the illegal acts, the establishment of sanctions and the institution of a judicial system of applying these sanctions [2].

**The scope of sanctions against Syria and Iran:**

Sanctions against Syria were adopted in 2011 and began as a standard set of measures including travel bans and asset freezes. In two years, they grew into one of the most complicated sanction regimes, amended 19 times at various stages. In the meantime, the situation in Syria continues to deteriorate. It is estimated that more than 60,000 people lost their lives and allegations of summary executions and torture are being reported. As long as the UN Security Council remains deadlock over Syria, the EU sanction regime will play a key role in the UK foreign policy-making.

As regards Iran, UN sanctions were imposed by Security Council resolution under Chapter VII of the UN Charter and later supplemented by EU measures. Their objective has been to increase pressure on the Iranian authorities to discontinue the country’s nuclear programme. The sanctions consist of a wide range of measures concerning trade and investment in the oil and gas sector, trade in precious metals or diamonds, and a separate set of measures aimed at human rights violations. Humanitarian exceptions have been provided for to allow medicines and foodstuffs to reach the Iranian population. The resulting economic pressure is having a visible impact on Iran’s foreign policy, forcing its authorities to re-engage in negotiations and make concessions in its nuclear proliferation efforts [3].

**Targeted sanctions:**

Iran and Syria are both subject to the so-called targeted sanctions regimes. They differ in that, in the case of Syria, only EU measures are in place, while in the case of Iran, EU and UN sanctions are being applied simultaneously. The UN Security Council has authority under Chapter VII of the UN Charter to impose economic sanctions to address threats to international peace and security. The EU not only implements such UN-mandated sanctions, but also imposes its own ‘autonomous’ sanctions, as part of its common foreign and security policy. The EU’s powers to impose restrictive measures are now in article 215 of the Lisbon Treaty.

Targeted sanctions aim to give effect to various different objectives. Counter-terrorism sanctions are adopted to prevent financing of terrorist activities; other sanctions regimes target the regimes of states such as Burma or Zimbabwe in order to put pressure on their governments to change aspects of their policy. Sanctions adopted in response to the Arab Spring aim to assist the repatriation of assets misappropriated by the former regime, sanctions against Iran are aimed at stopping Iran’s nuclear proliferation and ballistic programme, sanctions against Syria target those responsible for violent repression of protest. Although their aims diverge, they all follow a broadly similar pattern in terms of their effect, and can include asset freezes, travel bans for named individuals and companies, and sometimes restrictions on trade in particular goods or financial transactions [4].

**Sanctions Policy within the Normative System of Modern International Law:**

When we view sanctions from the standpoint of moral philosophy, we must of necessity inquire into their legitimacy within international law, especially since the current doctrine of international law presupposes that human rights constitute the jus cogens of general international law. (As above, we will be limiting ourselves here to considering the problem posed by comprehensive economic sanctions – both unilateral and multilateral – since specific sanctions, like those placed on military goods, do not affect the fundamental rights of the citizens as gravely. [4] The measures of the UN Security Council are also obliged to comply with human rights. As we have discussed elsewhere, human rights form the foundation of validity not only for every state's internal legal system but also for international law. Despite the normative connection between human rights and international law, a remarkable disparity nevertheless remains between the rules of modern international law conforming with human rights (such as the ban on the use of force in international relations in connection with the abolishing of the traditional jus ad bellum) and relics of old international law motivated by the principles of power and national interest. The latter manifest them not only in the right to veto exercised by the permanent members of the Security Council; they additionally assert themselves in the provision regarding comprehensive economic sanctions in accordance with Art. 41 of the Charter. The "complete interruption of economic relations" which this article mentions without any restrictive clause is fully in line with the tradition of medieval military sieges, i.e. the starvation of the civilian population in the interest of the respective power.34 The Security Council can impose such sanctions in the event, for instance, of a threat to international peace. The existence of such a threat
is determined by the Council itself, resulting in the problem of the arbitrariness of an interpretation motivated by mere power politics.35 In accordance with the formulations of Art. 41, the Security Council is in no way restricted in its power to impose sanctions; it need not justify form and extent of the sanctions.36 The Charter's phrasing in this context includes no reference to human rights considerations, i.e. to the protection of the civilian population. Indeed, comprehensive sanctions specifically target the latter [8].

The resolutions practice of the Security Council until now shows that as a last resort – and when in particular the interests of the permanent members so dictate – the Council is not beyond concocting a supposed threat to international peace so as to plausibly impose measures of intervention. (The sanctions against Haiti are a clear case in point: the USA saw to it that the problems of democracy and human rights in the country's interior were declared a threat to international peace.) Sanctions are used increasingly by the Security Council as a means to discipline "unruly" regimes (or those viewed as such by the USA). De facto, however, they share the nature of collective punishment – for the actions of the regime are attributed to the whole population – and above all are viewed in this manner by the population in question. Economic sanctions prove counterproductive to this extent with regard to the proclaimed goal (and in accordance with the Charter the sole permissible one) of maintaining or restoring peace. Through such sanctions, the resentment of the population is often awakened, for the latter feels unrightfully persecuted. This resentment can easily give way to new conflicts. Measures such as those taken against Iraq – several years after the end of the Kuwait occupation – betray an underlying intent of punishment and revenge, regardless of the proclaimed purpose of the resolutions [5].

Sanctions Policy with Regard to International Conventions:

The comprehensive sanctions policy outlined above furthermore runs counter to many international agreements and conventions, of which only a limited number of examples can be cited in this evaluation. (As with the declaration of human rights and the two International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the respective conventions are – surprisingly – only applicable to a limited extent to the sanctions policy of the Security Council. This clearly documents the fact that, in the framework of the United Nations – due to the circumstances of power politics – no priority is accorded to human rights, the ius cogens of international law, a fact which we will demonstrate. From the perspective of the theory of international law we propose, provisos in the specific conventions are highly problematic. To be considered in this regard are the provisions set out in § 25 (1) of the Universal Declaration of Human Rights (1948) and in § 11 (1) of the International Covenant on Economic, Social and Cultural Rights (in effect since 1976). With reference to comprehensive sanctions (as in the case of the oil and economic embargo against Iraq), § 1 (2) of the International Covenant is especially relevant: "In no case may a people be deprived of its own means of subsistence." International law, then, clearly permits no derogation from these provisions under any circumstances. These guarantees for human rights are specifically upheld in Art. 1 of the Universal Declaration on the Eradication of Hunger and Malnutrition (1974) by the World Food Conference [6].

The sanctions policy described above is furthermore contrary to the principles of the United Nations Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly Resolution 2625 [XXV] of October 24, 1970). With regard to the fundamental principle of non-intervention, the Declaration stipulates among other things that "No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind."61 That which the individual state is expressly prohibited from practicing is, in the name of "collective security", granted to the respective group of states in the Security Council. This is the case despite the fact that the resolutions often serve the interests of the strongest member country and that the sanctions are de facto imposed with the intention of destabilizing the internal politics of a country. In a later paragraph, the declaration therefore expressly negates the validity of its own provisions with regard to the measures authorized in accordance with Chapter VII of the Charter.62 This proviso empties the declaration's respective provisions of any content whatsoever; it does, however, shed light on the true intention, one which is motivated by power politics: to uphold the privileges of the Security Council. The provisions regarded as fundamental for the peaceful coexistence of states are all inapplicable to the Security Council. It is obvious that the permanent members profit the most from such exemptions [7].

Conclusions:

In terms of the topic, we can say that international law is ensured through the voluntary compliance of the norms of international law and, if necessary, by force or coercive measures applied directly by the states, individually or collectively, or through international organizations, regarding the state responsible for the violation of the norms of public international law. When an international dispute arises as a consequence of the infringement by a state, of the norms of the public international law, that cannot be resolved by peaceful means, the aggrieved party has the opportunity to use a series of limited measures and countermeasures, coercive
against the one/ones who has / have committed such acts, but with the recommendation to avoid as possible the armed force. In such cases, it is required to use special tools for dispute settlement embodied in

International sanctions with complementary role in relation to the means of peaceful solving the conflicts. The coercive measures may have different functions related to the state’s conduct, in order to restore the violated legality, to remove the non-amicable acts, to restore the violated rights, international peace and security and, last but not least, to obtain the repairing of the caused damages. The sanctions imposed by the international states and organizations appear as countermeasures - the most diverse manifestation - grouped in measures of retaliation and reprisal, plus armed self-defense, military blockade and other sanctions against the states, members of some organizations, for not respecting some mandatory provisions. The countermeasures aim at determining the guilty state, at stopping actions that violate the norms of international law or the rights of the state that applies those sanctions. This term refers to certain acts or omissions of a state, which become correct as a defense reaction and stop of the international illegal act.

REFERENCES