

Legal Reasons of International Sanction-Imposers

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ABSTRACT

Today, sanction is used as a mechanism and tool for seeking external political goals of countries. Although powerful states sometimes abuse this mechanism, international sanction is a legal mechanism and is used as a mutual action by Security Council and if offending country is investigated carefully and special sanctions are imposed for each country, it can be efficient and a good guarantee. The present paper tries to investigate legal fundamentals of one-sided sanctions and evaluation of legitimacy or illegitimacy of sanctions. Scientific analysis method was used and valid international assemblies' documents were used for this investigation.

KEYWORDS: Sanction, Security Council, one-sided, state, legitimacy

INTRODUCTION

Today, international sanctions are used as a tool for exercising economic pressure to countries in order to make offending countries adjust their behaviors. At the present time, this responsibility has been submitted to Security Council which is responsible for safeguarding international peace and security according to United Nations constitute. United Nations Security Council (SC) is responsible for identification of threats to international peace and security or imposing economic sanctions or adopting military action against intruder states and being present and responsible in strategic points of the world. According to article 41 of the Constitution which has been mentioned in Chapter 7, UNSC can respond to threat to international security and peace by resorting to sanctions. Economic sanctions are common types of actions which have been used a lot within the recent years. Although UN General assembly has condemned aggressive economic actions as mechanism for achieving political goals and has asked industrial countries not to use their superior position as an economic pressure mechanism, US has always tried to use economic sanction as a mechanism for putting countries under pressure. The present paper aims to deal with different types of international sanctions and clarification of their legitimacy or illegitimacy from international law viewpoint. Therefore, we first deal with sanction concept and background and then we investigate different types of sanctions and legitimacy of them.

Sanction concept and its historical background

Sanction means a systematic avoidance of establishment of social, economic, political or military relationship with one or several states for as punishment or reaching acceptable behavior. In spite of this, it is usually used in international economic relationships and products and service produced by offending country is boycotted. Sanction might be general. In other words, it might include all products and service or it might be specific and limited to a particular product (Iwans, 2003). It must be mentioned that although sanctions contain elements of punishment, they do not aim to make difficult conditions for people of that country purely and in fact, sanctions aim to make the country change its political behavior. It is also believed that deterrent effect is the most important function of sanctions. Sanction background can be traced back to the destiny of "captain Chalszi Boycott" who was a wealthy man in "Famine-Riddenn" in Ireland in late 1870s. Captain was isolated economically and socially by Ireland land assembly because of oppressive behavior towards farmers. With the start of 20th century, this term was transported from labor relations law to international arena and changed a lot. Sanction in international relationships was firstly private or national and described unity of individuals who decided not to have relationships with foreign people in order to make the foreign country and its citizens to behave in a particular way. This term was developed later; disconnection of financial and economic relationships with other countries and their citizens might be used as a kind of economic pressure or hostility, both in war time and peace time, by one or several countries. Sanction may also be used as a collective economic punishment in cases of peace violation by UN against offending country. Sanction is divided into "primary sanction" and "secondary sanction". If sanction is limited to two countries relationships, this is called primary sanction in which a country avoids establishing social and economic relationship with another country. Sometimes, a country may spread sanction domain and avoid establishing relationships with countries which have relationships with the country under sanction. This is called "secondary sanction". Sometimes, sanctioning country goes beyond this and like Damato Law in US against Iran, determines punishment for countries or

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companies which establish financial relationships with the country which is under sanction. It must be noted that sanction aims to make a country behave in a particular way or to damage a country, and this differentiates sanction from other economic mechanisms like tariffs, import or export ban and ... (Kash, 1982)

Legal reasons for sanctions and their legitimacy

Private (or national) sanctions

Sometimes, sanction may be imposed by non-governmental individuals, groups or institutes in order to make a foreign country or its citizens to behave in a particular way. The first large sanction on a particular land was imposed by Chinese people from 1905 to 1931.

Some other types of private sanctions can be mentioned: Indian people sanction on England (1896, 1905, and 1930) and Turkish people sanction on Austria-Hungarian Empire (1908, 1909).

Private sanctions are usually judged by national law, unless government starts them. If it is proved that a private sanction is illegal, only in rare cases like cases concerning violation of life-supporting laws and laws supporting foreigners' assets, international liability of the government will be propounded.

States' sanctions against other states

Besides private sanctions which are limited, one of the commonest types of sanctions is state sanctions. One of the effective and efficient techniques in implementation of foreign policy and for fulfillment of national benefits satisfaction is using economic, financial, commercial and technologic tools. A government which uses these mechanisms tries to make other governments change their foreign political behavior. Use of these mechanisms is not limited to the present era but states tried to make other states yield to their expectations in the past (Ghavam, 1993).

Up to now, economic sanctions have been important political mechanisms in powerful countries hands. USA has been one of the main supporters of commercial, economic and political sanctions and after Second World War; it has used this mechanism a lot (Malavi, 1995).

On the other hand, governmental sanctions may be in collective form and be conducted by several states against another or some other states. These kinds of sanctions also can be regarded as violator of development right. The principle of no intervention in other countries affairs is one of the most famous principles of international law which has been verified in notices, constitutes and conventions. Since there is no rule in international law which necessitates states to have discrimination-free commercial relationship with all countries, violation of no-intervention principle may be propounded in exceptional cases, considering the motivations of sanctioning country, and influences of sanction and vulnerability of countries. However, secondary sanction which is imposed against third-party countries which enter transaction with target country is considered as illegal intervention. Article 32 of states economic duties and laws constitute states that no state can use economic, political or any kind of action for obliging another state to obey. Resolution 2131 of General Assembly (1965) states: "no state can intervene in another state's internal and external affairs directly or indirectly." Limitations and bans concerning using sanctions have been mentioned in some mutual navigation and commerce treaties and also in General Agreement on tariffs and Trade (GAT) in 1947 and treaties for formation of groups and economic societies. An explicit ban on economic pressure has been mentioned in articles 15 and 16 of American Countries Organization Constitution (1948) (Zarif, 1997).

Repetition of sanctions illegitimacy in resolutions and some treaties is indicative of formation of international customary rule regarding this subject, although opposition of western countries and especially USA to illegitimacy of one-sided sanctions can prevent from imposition of this customary rule on these countries.

Considering the fact that using these sanctions is regarded as a national politics mechanism for meeting illegitimate national goals and benefits, many developed countries and especially USA claim that this mechanism is used as a kind of mutual pacific action which is taken against countries which violate international commitments. One important point is USA's mutual actions against IRI. American government claims that IRI government has violated international law in some cases. The question is that whether countries can resort to mutual action in return for violation of international commitments by one country? In spite of the fact that granting such a concession and right to complaining states and states which have been damaged by violation of international law does not seem to be rational and correct in a society which tries to form a mechanism for responding to international laws violation, this establishment has still a strong position in international law, although international community tries to institutionalize mutual actions. For instance, proposition of states international responsibility for international illegal actions can be mentioned. It was approved in the 53rd session of international law commission in 2001. In articles 49 to 54, this establishment has been accepted and some conditions and limitations have been specified (A/56/10, ch. IV.E).

Therefore, in spite of illegitimacy of sanctions in international law, countries can resort to sanction considering the conditions of countermeasures in international law against international laws violating state (Roso, 1990 and Momtaz, 1997).

Therefore, USA decisions and some industrial states actions in imposing sanctions on Iran after American diplomats crisis in Iran and USSR sanction following UN unsuccessful activity is legally justifiable and does not contradict international laws (Montaz, 2000).

Of course, conditions of resorting of countries to countermeasures which have been accepted in international law and have been mentioned in Responsibility of States approved by International Law commission must be observed concerning sanctions. One of the most important conditions which have been mentioned in article 50 is observation of imperative rules in international law. On no account any state can violate international imperative laws for preventing from violation of international laws. In this draft, contrary to the first draft, international law commission has not listed imperative rules and therefore, states are free. This is to small countries benefit to regard some non-imperative rules as imperative and prevent its violation within the framework of countermeasures. According to this article, states are not allowed to violate primary human rights and humanitarian actions in order to prevent from violation of international laws and these two limitations have been inferred from article 60 of Vienna Convention (1969) on treaties laws. Therefore, is an economic sanction violates countries principle of sovereignty on natural resources which is an imperative rule; the mentioned sanction will be illegitimate. Furthermore, if imposition of sanctions violates development right which is a basic human right, it will be illegitimate. On the other hand, according to article 50, a state which wants to resort to countermeasure cannot ignore commitments related to disagreements dissolution; in other words, if offending state and state which have been damaged by violation of international laws can solve their disagreements by other binding mechanisms, they must refer their disagreement to such authorities before resorting to countermeasure. Therefore, because we concluded Algerian Contract with USA and committed to refer our disagreements to Arbitration Court of Iran and America, USA must refer its claim on violation of international laws by Iran to this authority before resorting to countermeasure. After USA adopted decisions within the framework of Damato-Kennedy law, Iranian government registered a claim in Arbitration Court of Iran and America which is known as A-C claim. It can be concluded that USA sanctions do not have legal base, of course if we regard Responsibility of States as a legal rule. One of the other conditions which have been mentioned in article 51 of Responsibility of States is principle of proportionality. In other words, countermeasures must be adopted in a way that offending state is not damaged a lot. Therefore, sanctions must not damage political independence and sovereignty of offending country. An important point is that many items propounded in Responsibility of States are based on international code and can be cited. Considering the fact that in UN constitute, only resorting to military force has been banned and it is an imperative rule, and considering the acceptance of establishment countermeasure in international law, countries damaged by international law violation have right to resort to economic sanctions under some conditions and this is a weapon which is not purely owned by UNSC.

Collective sanctions by UN

Considering the experiences of united powers in the First World War, a collective economic sanction system has been mentioned in articles 16 and 17 of covenant of the league of the nations as international community punishment for offending country. Article 16 necessitates members to end their commercial and financial relationships with each member who resorts to war in opposition to its commitments in covenant framework. Sanction system was not an integrated and concentrated system in the covenant and was not put into action. Sanction has been discussed in the seventh chapter of the Constitue. According to this chapter, Security Council is responsible for identification of threat or peace violation or intrusion and also some authorities have been given to Security Council. The first category includes actions which does not involve violence. Article 41 of the constitute has listed these actions: "stopping all or part of economic relationships and communications through railroads, sea, air, post, telegraph, radio and other communication means and stopping political relationships". Imposition of sanction is among non-military actions predicted in article 41 of the Constitue and Security Council can impose sanctions after identification of peace violation or intrusion against offending country. For the second time, Security Council asked states to stop sending weapon and military equipment to South Africa in November 1977 and established a committee for investigation of imposition of sanctions. After cold war, Security Council has imposed partial or complete sanction on six countries: Libya, Liberia, Iraq, Somali, Yugoslavia and Haiti. Sanctions imposed in this period are three times more than the period before cold war (Risman, 1998). Increase in sanctions makes us imagine that this executive mechanism of Security Council is less costly for permanent members of Security Council in comparison with resorting to violence. Therefore, it is possible Security Council will impose sanctions on other countries in future without facing any problem (Kharrazi, 2010). In addition to Security Council, general assembly has also imposed sanctions in three cases as well as approval of resolutions. However, contrary to Security Council decisions, General Assembly resolutions are advices and their guarantee is international general thoughts. This is while Security Council sanctions are strict and observation of these sanctions is obligatory for all members of UN according to article 25 of the Constitue. Security Council seeks for one of the following goals in sanctions:

1. Limited or complete sanction might be imposed on a country in order to make that country change its behavior.

2. Imposition of sanction might be an introduction to application of violence by UN against a country.
3. Imposition of sanction may have undeclared goals.

Conclusion

In international law, sanctions are powerful mechanisms which are used for making a peace-violating country or offending country to behave in a particular way. Private sanctions which are organized by individuals and institutes do not have usually international liability. Legitimacy of these kinds of sanctions has not been doubted. Governmental sanctions are usually used by powerful countries as a foreign politics mechanism. The aim of such sanctions is making a state change its foreign politics behaviors. Therefore, these sanctions do not purely follow economic targets, but they might be aimed to reach political, social or military goals. Governmental sanctions may only be imposed on target government (primary sanction), or its inclusion circle may be developed and it may include countries which have commercial, financial, etc. relationships with target government (secondary sanctions). Although these sanctions were considered allowable according to the principle of the sovereignty of nations, they are not allowable according to contemporary international laws like UN resolutions, no-intervention in other countries internal and external affairs principle, development right and ... and sanctions which are imposed against countries, especially secondary sanctions, do not seem to be legitimate. However, because resorting to countermeasures against countries which violate international law is legitimate under some conditions, countries can use sanctions as countermeasure. In this field, the problem with responsibility of states is that it allows states to resort to sanction only with propounding international law violation claim by one country and this can have adverse results for international community. Collective sanctions which have been predicted by covenant of the league of the nations and UN constitute (article 41) are mechanisms for implementation of decisions of such organizations. Influences of international sanctions depend on the goals of sanctioning country or UN. Most such sanctions have adverse economic influences but are not that successful in changing the sanctioned country behavior. The reason for this can be attributed to the abilities of the country which is under sanction and negative response of other countries.

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