

An Investigation of United Nation's Sanctions: Evaluating An Idea

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ABSTRACT

Economic sanctions are among the measures that sometimes, the UN Security Council approves and implements to restore or stabilize international peace and security based on chapter vii of the UN charter. Usually, the purpose of economic sanctions based on chapter vii of the UN is enforcing Iran the violating countries to implement the rules. Unprecedented expansion of sanctions and increasing their range after the third millennium makes it more necessary to study and research about the UN economic sanctions regime. Although the subject of economic sanctions is not a new phenomenon in international relations or multilateral UN actions, but the function of UN in this subject have been made this as a considerable international reality in international relations.

Prior to the establishment of the League of Nations in 1918, various sanctions were been done in order to undermine the governments, usually in times of peace and to stop war in conflicts.

However, after the establishment of the UN, sanctions regime found new dimensions. In this study, we will review the strengths and weaknesses of the regime of economic sanctions by the UN Security Council under chapter vii of the charter (article 41).

KEYWORDS: economic sanctions, neutrality, the principle of proportionality, the UN Security Council, chapter seven of the charter

1. INTRODUCTION

In the international community, all of the countries are not subject to the provisions of public international laws and international public order in an equal manner, therefore, in the statutes of international organizations and the United Nations' charter, various methods are being used to subdue the aggressor countries, including economic sanctions that diversity of theme are manifested in article 41 of the UN charter. Nevertheless, some believe that, economic sanctions are among the most important tools of a foreign policy. Some others believe that, economic sanctions are an appropriate alternative to military enforcement.

Economic sanctions, whatever their goals are, address various countries including the prohibited country or business parties. UN, implementing sanctions, seeks a kind of behavior changes in offending country but these behaviors are not necessarily required to have material and concrete origins.

Evaluating the success of sanctions is very difficult task because the main damage influences the people and not the government. Vulnerability of sanctioned countries is depended on several factors, including the country's concentration of foreign trade, elasticity of international markets and its economy's openness.

However, experience has shown that, economic sanction is one of the best tools to impose international values to offending and aggressive countries worldwide. The first four decades of United Nations' actions in southern Rhodesia in 1966 and South Africa in 1977 was the peak power of UN performance in imposing economic sanctions of the UN charter. Sanctions however, in some countries, including Iraq, the former Yugoslavia, Libya, Somalia, Liberia, Cambodia and Bosnia and Herzegovina were not effective because the amount of conflicts, violations of human rights and humanitarian laws was still high.

However, some believe that, the economic sanctions show the association of international community to raise the prestige of international disciplines such as Jus Cognes Obligations and the Erga Omnes Obligations of public international laws. However, sanctions will be effective when they are popular and have comprehensive general agreement on their implementation with the exception that, no damage must be imported to nations' primary human rights. In this regard, until obtaining the assurance of success of sanctions, they should not be imposed to prevent suffering and hardship for the civilian persons that are not considered as offenders.

In this study we are going to prove that, whether imposing sanctions is an enforcement or is a disciplinary and safety action and whether all respects of it are considered in its implement or not. It must be accepted that, still, sanctions are one of the best tools to prevent war and imposing the policies of the international community.

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2. The importance of sanctions in international relations

International sanctions are collective action against on the country or countries that violate or threaten the public international laws. Usually, sanctions involve political, economic or military actions aimed at force the violating country to implement the laws. For example, the dispute over Iran's nuclear program, SC dealt with the issue of Iran for the first time in 2006, after an IAEA resolution found the country in violation of the Non-proliferation Treaty (NPT) and claimed that it's nuclear activities "have given rise to questions that are within the competence of Security Council". Since then, a total of five rounds of sanction have been imposed.(Friedrichs, 2012, p55)

The unprecedented increase in the number and scope of sanctions by the UN Security Council in early third millennium, adjusts the need for further study of the UN sanctions regime. Although, sanctions are not new issue in bilateral and international relations but the performance of UN in this context in the recent years had such a fashion that, some scholars have considered sanctions as one of the realities of international life today. Nevertheless, sanctions between the two countries and even the use of sanctions by some countries as effective instruments of foreign policy have a long history. (Abolhassani, 1996, p.143)

Before the creation of the League of Nations, various sanctions was imposed in bilateral relations to undermine the other party before the war or during the war and in the same manner, in the twentieth century, imposing bilateral sanctions, outside the international organizations was spread. Therefore, bilateral sanctions have had two major goals; first, punishing the country who violated public international law, depriving some countries from facilities, resources and international connections and second, forcing them to accept the laws and rules of the countries imposed sanctions or international organizations in general and special. Afterwards, with the establishment of the League of Nations (1920-1919), and the United Nations (1945) the sanctions regime found a new dimension as part of the collective security system to maintain international peace and security and deal with warmongers.

Woodrow Wilson the 28th president of the USA, during his speeches in 1919, stated his opinion on the sanctions as "if we use this economic, peaceful, silent and deadly treatment then, there will be no need to use force. However, this is terrible treatment. Economic sanctions will put such a pressure on the lives of people that, on my opinion, no contemporary nation have the strength to deal with it", (Abolhassani, 1996, p.144).

However, the excessive amount of UN sanctions during the cold war in terms of the quality, number, causes of actions, goals, and even the fashion of supervising, control, and the probability of frequent use of this tool by Security Council in the future, raised the sensitivity of countries to the issues such as the degree of success in achieving the initial and determined objectives, the impact of sanctions on the people of sanctioned country, impact of sanctions on the other countries and various legal aspects of sanctions particularly on the purposefulness of applying a variety of sanctions.

3. The UN sanctions regime

The founders of the United Nations in 1945, according to the deficiencies of the League of Nations in imposing sanctions, were tried to focus on the decision-making power of UN Security Council on the issue of maintaining international peace and security. Therefore, according to article 39 of the charter of recognizing threat to peace, breach of the peace, and assault was merely delegated to the authority of Security Council.

Therefore, there were two the main reasons for limited appeal of Council to sanctions in this period. The first was the competition between the two blocks of east and west in this period so that, each block, creating an organizational system, were trying to absorb nations into their block. Therefore, the effect of this competition during the cold war in front of the United Nations was preventing from making decisions such as economic sanctions against the members of a block by another. Thus, two superpowers of USA and the Soviet Union, according to their veto ability in the Security Council, were been preventing punitive action against one of their members, and thus for a while, article 41 of the charter was useless.

Although, the Security Council had the responsibility to identify any breaches of peace, threatening, and violating the peace but the competing conditions between two superpowers even impressed the interpretation of the charter so that, identifying aggressor and victim in a conflict was under the effect of these two superpowers.

For example, in 1959, president of the National Congress of Africa called on the international community to end the apartheid system of South Africa regime by economic sanctions and three years later, the UN general assembly, by a resolution urged all countries to boycott exports to and imports to South Africa (Klein, 1990, p.232)

Some countries, particularly European countries argued that, general assembly's resolution is not legally binding and contrary to the call of general assembly, continued their economic and trading relations with the racist regime of South Africa. However, Security Council, based on the request of 32 African countries in 1963 to investigate the explosive situation in the republic of South Africa, adopted no. 181 resolution so that, the resolution has such a form that, its interpretation could have be considered as non-compliance of members of the United Nations to the necessity of its implementation.

The resolution requested the countries to "stop sales and shipment of munitions and military vehicles to South Africa ". At the time, British and American representatives argued that, the lack of explicit mention to the chapter

VII of charter in the resolution to apply mandatory sanctions indicates that, the resolution, in the form of chapter VI, i.e. the pacific settlement of disputes, solely advised a recommendation and therefore, enforcement of its acts are not mandatory and binding.

Therefore, until 1977, the general assembly, repeatedly was asking the UN Security Council adopt decision against apartheid based on chapter VII charter. Nevertheless, in 1977, the 418 resolution of council, for the first time in history of UN managed to impose munitions sanction (mandatory) on a member based on chapter VII of the charter.

The second sanction of United Nations was against southern Rhodesia during the cold war. General assembly in 1963 adopted a resolution asking the Britain replace the old constitution with a new one via election and participation of all groups and political parties. On the same date (1962), Ian Smith was selected via an election based on the prior constitution and after three years, despite previous agreements to guarantee the rights of blacks of southern Rhodesia, announced the declaration of independence.

Therefore, many African countries considered Ian Smith's act as a threat against international peace and security, and in 1965, the Security Council adopted resolution 217 calling on UN member not to recognize the government of Ian Smith and stop their economic and trade relations with it. Finally two subsequent resolutions, namely 232 resolution in 1966 and 253 resolution in 1968, intensified economic sanctions against Rhodesia (Morvay, 1990, p.392) based on chapter seven of the UN charter and thereby ended violations to public international law.

4. The Morality of sanctions

Nowadays, economic sanctions are imposed against governments that do not meet international norms such as Rhodesia and South Africa for the continuation of the apartheid regime and trade sanctions against Serbia, the international response to the intensifying civil war in the former Yugoslavia. Interestingly, when Joseph Stalin committed the largest massacre of history in 1930 by killing 20 million of citizens, international community looked at it as an internal affair.

However, today, due to the development and universality of human rights, the international community has been directed toward the stage to treat with the countries violating the civil rights of their citizens. Thus, major developments, have entered new moral element about the necessity of international sanctions. This issue is a moral because war is unethical. This means that, war is the worst kind of violation to the realm of ethics, especially given that, in the two last centuries many innocent citizens were victims of unwanted wars.

There are countries in the forefront of organizing, leading the international community and sanctions that are in possession of the biggest media, including television networks through which, have enormous influence on moral sense of the world's people in support of those who are oppressed in other lands (D'Amato, 1995, p.19).

Although the UN have not been generally successful in imposing sanctions, but it should be noted that, members of this organization are governments not the people. Therefore, if a government violates its citizens' rights in its borders, other governments usually refuse to impose sanctions while it is possible that they finally, due to the brace of international public opinions, are forced to adopt sanctions against countries that violate public international laws.

In the recent years, economic sanctions generally were used against countries that violated fundamental principles of public international law and human rights, but it should be noted that, moral principles are not always in favor of sanction imposing governments and against sanctioned government since the sanctions could be used in order to serve the false moral principles.

Given that, economic sanctions against the government of breaching the rules of public international law are ways to enforce moral standards of the countries worldwide, nevertheless, for sanctions to be effective, we should step forward slowly and with caution because if moral emotions of human beings would be harmonious with international economic sanctions, it would be more difficult to opportunistic countries to take advantages of sanctions in favor of their immoral purposes (D'Amato, 1995, p.293)

Economic sanctions have a significant effect on people's lives thus, they must be evaluated in a moral framework before applying because imposing public damage to innocent people is an immoral act that cannot be justified with any moral or profit-oriented structure.

As a result, if the people would be the subject to economic sanctions, they should be considered as immoral acts (Kochler, 1995, p.4), but it should be noted that, there is no comprehensive formula for judging the morality of sanctions. Therefore, in each case, they must be assessed according to the circumstances.

5. The human rights aspect of economic sanctions and Evaluation of economic sanctions in action

This means respecting the principles of human rights in economic sanctions. Some examples of this principle are considered in article 2 of the third convention of Geneva, 1949 including, health care, good residence location, nutrition, access to clean water, the right to perform religious ceremonies, education, sports and recreation and intellectual activity. Therefore, laws principles have a wide circle and the economic sanctions should be applied so that, human rights cannot be ignored (Henkin, 1985, p. 268).

Usually, the mechanism of economic sanctions and the practical issues that may be effective in achieving its goals or failure, with regard to the complexity and diversity of effective factors, cannot give good judgments about its outcomes for those who consider them as a strategy. Therefore, it is possible that, statements of politicians or diplomats of sanctioned or enforcer governments would be false and misleading because often they have no proper understanding from the results of the sanctions and cannot absolutely predict the effects of sanctions.

From the perspective of public international law, the UN security council sanctions on the basis of chapter vii regardless of the influence of superpowers especially the united states, after the cold war, have international legitimacy and consensus and this consensus usually has the most effect on the success of the economic sanctions, but if we consider economic sanctions outside of Security Council system, i.e. bilateral sanctions, it will be different.

The most important thing concerning economic sanctions is their success rate. There are two theories to answers to this question. Some believe that, economic sanctions may not be completely successful and relatively provide boycotters' goals, and some believe vice versa. The latter believe that, economic sanctions, fundamentally, are not successful tools for foreign policy to achieve the intended goals and political leaders impose them from anger, malice, and sometimes domestic or international issues, or even to maintain their internal or external prestige (Lapzodiot Cartwright , 1376, pp. 17).

Economic sanctions, concerning to above-mentioned issues, may have retributive intent and were applied merely to harm sanctioned country due to the action that is violation from the point of view of a boycotter country. Sometimes, economic sanctions have future oriented goals. These cases usually have binding and inhibition state and behavior change is a goal too.

Economic sanctions by the Security Council maybe softened under circumstances such as adverse social effects or pressure of the public international community.

For example, about economic sanctions against Iraq by the United Nations, Amtomo Monteiro, Portugal's permanent representative in the UN and president of the committee of 661, The most comprehensive Sanctions Regime, said that: "two years ago when Portugal became a member of Security Council, I appointed as chairman of the committee of 661. This committee was established in 1990 to obtain comprehensive information about the sanctions of UN. This committee determined and approved economic sanctions about economic products of Iraq, confiscating the assets of Iraqi officials, and restricting flights from or to Iraq. Since the public international community became aware of the gradually negative effects of these sanctions on the Iraqi people, five years after the Persian Gulf War, humanitarian needs in Iraq, the UN Security Council was strongly decided to recognize instant solutions to alleviate the suffering of the Iraqi people". Accordingly, the UN agreed oil-for-food program. This program was a kind of flexibility in implementing the UN sanctions on Iraq. Based on this program, there was an attempt to mitigate the effects of severe sanctions in order to mitigate the suffering of innocent Iraqi people who have no role in the necessity of these sanctions.

In this regard, travel restrictions, confiscations, import and export banning were among the sanctions that had the most effect on those who directly responsible for the lack of acceptance of international obligations, in particular, the UN resolutions. Therefore, in general, selecting a suitable enforcement for economic sanctions is very important and Security Council must be very careful on implementing any sanctions because the excessive flexibility over the sanctions will results in the audacity of wrongdoer governments and disappointment of participating countries. Therefore, determining exact enforcement is important in any aspect (Tohidi Fard, 2002, p 126).

In addition, if the decision or action of a government would be non-rational or abuse of authority then it is rejected. For example, on 11 November 1965, the whites of Rhodesia (British colony), unilaterally declared independence. This was against the will of Britain and 94 percent of Africans resident in Rhodesia (now Zimbabwe). Followed on 16 December 1966, the Security Council declared the situation in Rhodesia a threat to international peace and ordered to members to stop trade of some goods with Rhodesia. Some British politicians believed that, Rhodesia's situation was not a threat to international peace but Security Council based on article 39, have the authority to decide in this issue and because there was a possibility of damages to surrounding areas due to the violent anarchy of Rhodesia's Africans, thus it was wise to consider it as a threats to international peace and security.

According to article 39 of the charter, the United Nations' Security Council is in charge for maintaining peace and international security. However, the council is not permitted to disregard human rights necessities of sanctioned territories.

6. RESULTS

UN Security Council sanctions are used by Security Council to maintain or restore international peace and security without military intervention. Despite the fact that, economic sanctions were expected nearly 70 years ago in the charter of the United Nations but due to the political reasons associated to the cold war, these tools were not successful in that period.

In other words, economic sanctions of UN during the first five years of 1990s had not political success in order to achieve predetermined goals. In most of sanctions, using military intervention or at least the threatening to use it

to achieve targets has been used. For example, ending the invasion of Kuwait by Iraqi Baathist regime is a typical of military cooperation with the economic sanctions against Iraq.

In evaluating economic sanctions, extra to the complex situations international and different or even conflicting behaviors that sometimes neutralize the effects of sanctions, the nature of the sanctioned regime must be considered. For example, in long-term, it is possible to sanctioned government to adopt with conditions of economic sanctions and sanctions without proper speed may lose their effects. For economic situation, if they are not targeted and smart, they will deteriorate economic conditions of people who have no role in the use of sanctions that is primarily against the predetermined goals based on article 1 of charter i.e. Socio-economical promotion. In order to achieve the goals of sanctions, the cooperation of other countries is essential. However, it should be considered that, imposing economic sanctions not only damages the targeted country but also affect other neutral countries. This should be considered to prevent gradual ignorance of members of the United Nations to impose sanctions.

In general, due to the observation of the people of the sanctioned country, arms embargo is appropriate in most cases because the comprehensive sanctions usually involve innocent people with plenty of problems who have no role in disobeying norms international rules. Therefore, the Security Council as one of the elements of United Nations is required to comply with UN rules, regulations, and observance of three major principles: necessity of sanctions, proportionality and complying with human rights. Moreover, Jus Cognes Obligations of general public international law should also be considered in time of imposing economic sanctions. The most important Jus Cognes Obligations is a nations right to life and as we know, the term has a broad concept that includes the delivery of a minimum of goods, services, and facilities related to health cares. In the use of economic sanctions by the Security Council, the principle of separation should be considered and the targets of sanctions must be offender officials, extremist leaders, and governments, not ordinary and innocent people. Therefore, smart and targeted sanctions are those, which prevent harm to innocent people and simply influence authoritarian governments or rebel leaders and terrorist groups.

Therefore, sacrificing a nation in line with the strategic goals of a superpower or a coalition, as it sometimes is in the Security Council, is not morally justifiable by any means. As a result, the most important moral principles in planning and implementation of sanctions should be consideration of the human rights. Ignoring this issue is what that is out of the nature and goals of the violent acts of chapter vii of the UN charter and if the goal of the sanctions is damaging to the people of a territory it should be considered as an immoral act. For example, military sanctions targeting the country's military power, financial sanctions, ban on traveling abroad, freeze, and confiscate of private assets of leaders of governments violating public international laws are among these reasonable sanctions.

Economic sanctions under chapter vii of the charter of the United Nations are considered as the most severe political conflicts. These sanctions may be imposed on political partialities. In addition, economic sanctions could be underlying trend to military actions if economic sanctions will not be effective.

According to the issues mentioned above, although economic sanctions themselves are considered as to be obscene and harmful and they may imposed unjustly, but for the country that is less depended on other countries and has strong infrastructure and agriculture, sanctions have the minimum effect.

Although the compilers of the charter demonstrated the goals of chapter vii of the charter to maintain the international peace and security but, there are politicians, who have unjustly, using this tool to maintain their power, show their global hegemony and dominance of other countries and their resources.

From the perspective of public international laws, the most important aspect of the economic warfare lies beneath its role as a benchmark for evaluating different stages of the evolution of our ideas about the nature and purpose of public international law. In general, the direction of public international law during the past two centuries have changed from the focus and emphasis on controlling conflicts, toward limit, minimize, and eventually eradicate the conflicts.

On this basis, the ideal of partnership between nations should be replaced with conflicts. If our interpretation from the general tendency of public international law would be correct, we can guess, by boldness and caution that, the general movement of public international law is toward prohibition of economic warfare because public international law is an instrument to unite countries and put them together in the way of common effort for the welfare of all humanity. Therefore, it is required that, international community takes steps with conscious and care to prevent the deviation from predetermined objectives of the charter by the will of some totalitarian governments in order to achieve the objectives of the charter of along with freedom, equality, justice, peace, and security. We should not forget that, we are the same united nations that, at 1945, have sworn to protect human rights and avoid war. It is hoped not to forget this in imposing economic sanctions.

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