

Forum: Legal Committee (GA6)

Issue: The question of legitimacy of economic sanctions under international law

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INTRODUCTION

Economic sanctions have been present in human history since ancient time. Already in 432 B.C., ancient Athens implemented a trade embargo on their neighbor city, Megara, which was the first known imposition of sanctions as we understand it today.

Since the Second World War, states have been highly depending on economic sanctions programs in order to achieve desired outcomes without resorting to military action. Sanctions are an important part of every rational legal system and may be imposed by the UN in peacetime as well as in times of armed conflict.

Governments and multinational organizations impose economic sanctions in an attempt to change the strategic decisions of state and non-state actors that threaten their interests or breach international rules of conduct. Reviewers state that sanctions are usually poorly conceived and rarely successful in altering the behavior of the target state. Other experts support their imposition and contend that, nowadays, financial sanctions have become more effective and continue to be a fundamental foreign policy tool. Moreover, such penalties have become the most characteristic feature of the Western response concerning several geopolitical challenges.

It is vital to examine the legal framework, within which sanctions may be imposed, as well as the legal restrictions on their application and the policy reasons for limitations on the Security Council's use of its power to employ sanctions. The severe humanitarian impact economic intervention has to the inhabitants of the target state and the growing frequency, with which the international community turns to imposing economic sanctions, are two major reasons that must be taken into account.

Intervening into a country's economy by exercising the right to use financial sanctions is a controversial and highly debatable issue, as it is rather difficult to draw a distinct line between the legitimate economic sanctions and unlawful pressure.

DEFINITION OF KEY TERMS¹

Economic Sanctions

Economic sanctions are merchandising and financial penalties imposed by a single or multiple nations against a targeted independent state, group, or individual. Economic sanctions could embody various kinds of trade barriers, tariffs, and restrictions on economic transactions. Economic coercions are sometimes applied by more economically developed countries (MEDCs) upon less economically developed ones (LEDCs). This may occur for one of two reasons: either the last-mentioned is a threat to the security of the MEDC or that country had, or was accused of, not following an international agreement or treaty, such as the human rights convention.

Trade barriers

Trade barriers are government policies that set limitations on international trade. They can make trade harder and more expensive due to higher tariffs or even hinder commerce entirely as in the case of an embargo. A trade war breaks out if two or more nations repeatedly raise trade barriers against one another. Trade barriers have three forms: quotas, tariffs or non-tariff barriers.

Quotas

A quota is a trade restriction imposed by a government, which limits the quantity or the price of goods that can be imported or exported during a set period of time. Quotas are used in international trade to help regulate the volume of trade between countries. They are sometimes set on particular products to diminish imports, thus increasing national production.

Tariff Barriers

A tariff is the most common barrier to trade. A tariff is a tax imposed on imported goods and services that restricts trade by increasing the price of the imported goods and services in order to make them more expensive for the customers, thus providing additional revenue to the government and to domestic producers. By raising the price of goods they make imports less competitive.

¹ "Investopedia." *Investopedia*, Investopedia, www.investopedia.com/.

Non-Tariff Barriers (NTBs)

Non-Tariff Barriers involve rules and regulations, which make trade more difficult. For instance, if foreign companies are obliged to comply with mazy manufacturing laws, it can be difficult to trade.

Extraterritorial sanctions

Extraterritorial sanctions are designed to restrict the economic activity of governments, businesses, and nationals of third countries. Consequently, many states consider these sanctions harmful for their national sovereignty and a violation of international law. Such types of sanctions have been applied to Cuba, Sudan, the DPRK, Iraq, Iran and Libya by the USA.

Bilateral Sanctions

This term means that a group or block of countries is supporting the use of sanctions. Since they are enacted by groups of countries, they can be considered less risky because no country is on the line for the sanctions' result. An example could be the sanctions targeting the Russian Federation.

Unilateral sanctions

A unilateral sanction means that a single country is enacting the sanctions, as with Syria. They are riskier than bilateral ones but can be very effective if carried out by an economically powerful country.

Embargo

An embargo is the most direct trade barrier. It is a governmental order that limits commerce or trade with a specific country or the exchange of certain goods. It may lead to the complete ban on imports from a certain country. It is designed to isolate a country and create difficulties for its government forcing it to act on the issue that led to the embargo.

BACKGROUND INFORMATION

The imposition of economic sanctions

Analysts divide economic sanctions into two different separate categories: as forms of foreign policy or as ways of international law enforcement. What is pursued in the first case is the accomplishment of several foreign policy aims, while in the second one the enforcement of international law or international ethical norms.

Financial coercion works as a countermeasure when a party does not comply with the obligations of a treaty. According to general international law, these

countermeasures are lawful on the condition that they are proportionate. The UN tolerates the use of bilateral sanctions against a nation if only it violates human rights (e.g., Nicaragua), or a resolution concerning nuclear weapons is breached (e.g., DPRK's program).

Economic intervention may be carried out for different reasons, such as a form of punishment for the illegal economic actions of another country. To make it more clear, a country producing steel is possible to make use of sanctions when another state attempts to defend its nascent steel industry by imposing a quota on imports of foreign steel.

²Generally, economic penalties, from the perspective of international law, are in opposition to free trade and sovereignty of a country. Though, what is needed for accomplishing peace and stability via financial collaboration, as the third paragraph of Article I of the UN Charter mentions, is the formation of a global framework for worldwide trade. Consequently, the amelioration of worldwide cooperation, aided by the improvement of economic exchanges between nations so as to decrease the reasons provoking disputes, is vital.

The menace of sanctions can alter the policies of a target country functioning as an alternative way to avoid military intervention or war.

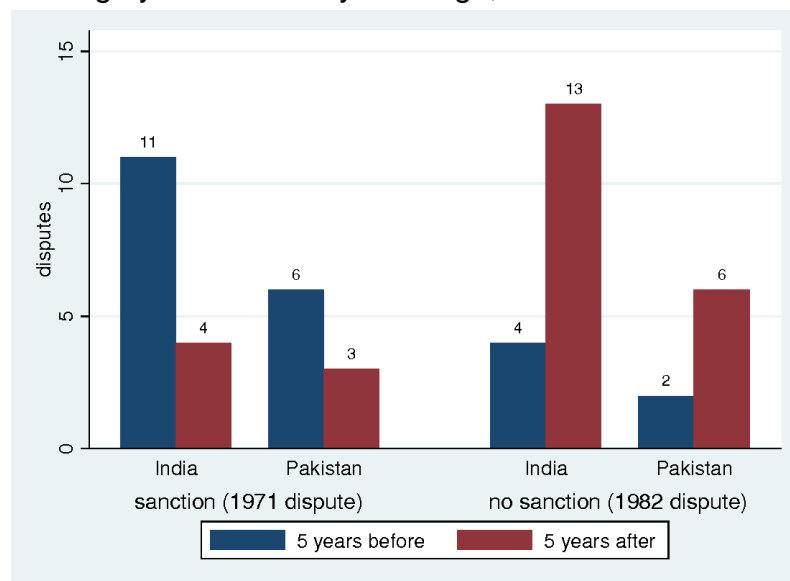


TABLE 1- NUMBER OF DISPUTES BEFORE AND AFTER THE 1971 SANCTIONED INDIAN-PAKISTANI MILITARIZED DISPUTE AND THE 1982 UNSANCTIONED DISPUTE

² Petrescu, Ioana Maria. "[PDF] Rethinking Economic Sanction Success: Sanctions as Deterrents - Semantic Scholar." [PDF] Rethinking Economic Sanction Success : Sanctions as Deterrents - Semantic Scholar, 1 Jan. 1970, www.semanticscholar.org/paper/Rethinking-Economic-Sanction-Success-%3A-Sanctions-as-Petrescu/974da7f099124e7bda4bde73b10d86c1a5841aea.

The Impact of a Sanction

The most imminent impact of import sanctions is that the target country's exports cannot be purchased abroad. This could have enormous drawbacks if the economy of the target country relies mainly on exported goods or services. These penalties can lead to political, humanitarian and economic instability that allows more authoritarian parties to rise to power, or can lead to the fall of government creating a power vacuum. Moreover, the affected country can be more prone to extremism.

Sanctions may sometimes lead to unintended effects. For example, in 1973, the Organization of Arab Petroleum-Exporting Countries (OAPEC) punished the US for supplying Israel with weapons by means of an embargo on oil shipments. OAPEC's actions unintendedly led to a worldwide stock market crash in 1973-74, the embargoed countries reduced their oil consumption and the policy changes OAPEC wished for never happened, as elevated oil prices led to an arms race in Middle Eastern countries.

Sanctions may increase costs to citizens and businesses of the target country resulting in financial loss caused by unemployment, as well as production loss. Furthermore, the variety of products and services available to consumers is reduced while the companies' cost is increased as they have to look for supplies elsewhere. If a sanction is unilateral, a third-party country can be used to circumvent the impact of blocked imports or exports.

Sanctions under the UN Charter and international law

The context of the UN Charter, when imposing sanctions, must be taken into consideration, as well as its purposes and principles, in order to promote human rights and international law.

Chapter IV of the UN Charter

In accordance with Chapter IV, the UN should resolve referred issues via recommendation and based on Chapter VII of the Charter.

Chapter VII of the UN Charter/Article 39

The Security Council may activate Article 41, after first determining, under Article 39, the existence of a threat to the peace, breach of the peace, or act of aggression, and if the sanctions are employed to maintain or restore global peace and security.

Chapter VII of the UN Charter/Article 41

This chapter allows the Security Council to act in cases, such as endangering the peace, breach of the peace, and invasion, and to take military and non-military action to

“restore international peace and security”. Under article 41 of the UN, the Security Council can impose economic sanctions to implement its decisions.

Chapter VIII of the UN Charter

Chapter VIII describes sanctions regimes initiated by intergovernmental organizations, such as the EU, and then moves to examine the basis on which they have been adopted.

In times of war, international humanitarian law and the non-derogable human rights should be safeguarded and legal restrictions should be set when imposing financial penalties. In peacetime, human rights law should be taken into account when determining legal limitations on the imposition of sanctions. Many authors support that the standard of living of the population in the target country should not be brought below a subsistence level, while others claim that these coercions should not violate the people's basic human rights of living and surviving. Both states and the Security Council should take into account the vital interests of the civilian population and of less privileged groups when imposing sanctions.

The illegitimacy of economic sanctions

When a country's economy is distorted by restrictions on its imports and exports, this is in contrast to the current international economic system's operation. In a way, these restrictions are against the concept of financial liberty, which is one of the core elements of freedom in general. Every country in the context of market economy has the right to freedom of commerce and, when this freedom is violated, there is a breach of their basic rights, thus making the sanctions illegitimate.

So, the role of the Security Council is to safeguard the legitimacy of the measures taken. Unfortunately, there are cases when measures are taken unilaterally, i.e., without the permission of the UN, affecting the supply of humanitarian resources to the receiving state, thus making them illegal.

How successful are economic sanctions?

³The number of parties involved is closely linked with the success of sanctions. Bilateral sanctions are more effective than unilateral sanctions, though generally the success rate is low. In many cases, the sanctions failed to change the target state's policies although they affected negatively its economy. Financial penalties are seldom precise enough to influence only the target economy, while the premise that the economic pressure will lead to political changes beneficial to the country imposing the sanctions is groundless and unfounded.

Table 6.1 Success by policy goal

Policy goal	Success cases	Failure cases	Total	Success ratio (percent of total)
Modest policy changes	22	21	43	51
Regime change and democratization	25	55	80	31
Disruption of military adventures	4	15	19	21
Military impairment	9	20	29	31
Other major policy changes	10	23	33	30
All cases	70	134	204	34

TABLE 2 - THE SUCCESS RATE OF ECONOMIC SANCTIONS PER POLICY GOAL

³ Economic Sanctions Reconsidered, 3rd Ed., Preview Chapter 6.
https://www.piiie.com/publications/chapters_preview/4075/03iie4075.pdf

MAJOR COUNTRIES AND ORGANISATIONS INVOLVED

The United States of America (USA)

⁴The United States uses economic and financial sanctions more than any other country. Nowadays, there are about 10 countries under the US sanctions. Moreover, the US has created an agency, known under the name Office of Foreign Assets Control (OFAC), which currently coerced the Balkans and 12 other foreign states, as well as a variety of groups and individuals.

The termination of trade with other countries is an example of the American economic policy specifically designed to influence the political behavior of a target state. The continual imposition of economic sanctions creates serious questions concerning their legitimacy under international law.

U.S. SANCTIONS PROGRAMS

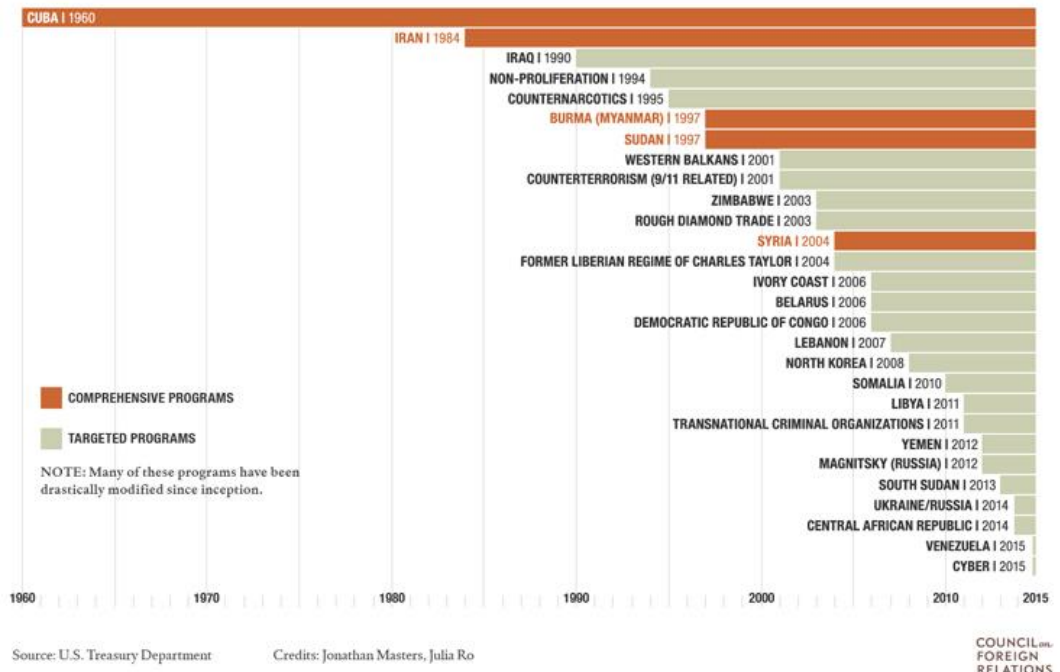


TABLE 3 - U.S. COMPREHENSIVE AND TARGETED SANCTIONS PROGRAMS

Iran

⁴ US Treasury Iran Sanctions United States Department of 5116131, <https://academia-salamanca.info/?h=US%2BTreasury%2B%2BIran%2BSanctions%2B%2BUnited%2BStates%2BDepartment%2Bof>.

In recent years, the USA placed further unilateral, extraterritorial and comprehensive sanctions against Iran due to its allegedly illicit activities. Taking into consideration that promoting peaceful nuclear technology in compliance with the Treaty on the Non-Proliferation of Nuclear Weapons (NPT)⁵ is not among the defined objectives of the UN Charter, the economic coercion of Iran is illegal originating from political unfairness and old hostility. Additionally, the USA's actions violate the Treaty of Amity, Economic Relations and Consular Rights signed in 1955 between the USA and Iran⁶. The imposed economic embargo has serious effects on the financial, industrial and petrochemical sectors of Iran and has led to stagnation of its economy.

The Russian Federation

Since 2014, the US, EU, as well as the World Trade Organization (WTO), have implemented bilateral sanctions, such as trade barriers, against the Russian Federation for intervening in Crimea without the Ukrainian government's permission.

Russia, on the other hand, has claimed that Western sanctions are inconsistent with the WTO law, as they breached the regulations on market access and the most beneficial principles related to national trade. The country has not only presented its own counter-measures in the form of economic sanctions, but also threatened to set off formal WTO dispute settlement proceedings against the EU and the US.

The Democratic People's Republic of Korea (DPRK)

Although DPRK's regime holds a reclusive stand, there have been several allegations that nuclear armed North Korea poses a threat to security and peace on an international scale.

As negotiations between the DPRK, its Southern neighbor and the USA did not manage to prevent the nuclear tests of July 2017 and those beforehand, China and the USA cooperated in implementing stronger measures against North Korea. They imposed trade restrictions, which had a huge effect on the citizens of the country, but have, apparently, not influenced the North Korean regime to a desirable degree, if at all.

Lastly, although no formal court proceedings concerning the fair and clear procedures were identified for the UN sanctions regimes relating to DPRK (Resolution 1718), as well as to Guinea-Bissau, Lebanon (Resolution 1636), Mali, Somalia/Eritrea, South Sudan, Sudan and Yemen, the Security Council demanded their imposition, so they should be considered as legitimate.

⁵"Treaty on the Non-Proliferation of Nuclear Weapons (NPT) – UNODA." *United Nations*, United Nations, <https://www.un.org/disarmament/wmd/nuclear/npt/>.

⁶ "UNTC." *United Nations*, United Nations, <https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280142196>.

The Syrian Arab Republic

Syria has faced unilateral coercive measures from the US and the EU, because of the accusations that its government supports terrorism, pursues weapons of mass destruction and missile programs, etc.

Since 1979, the US has imposed severe and multiple penalties on Syria including export sanctions. The EU, from its side, has implemented an oil embargo, imposed restrictions on specific investments in the country, placed bans on many companies linked to the government of the Syrian President Bashar al-Assad and frozen the assets of Syrian Central Bank across the bloc. Currently, the EU voted for the extension of the bans until June 1, 2019.

These penalties imposed on the Syrian people represent a financial extortion, as they affect the lives of the inhabitants and hinder the sufficient delivery of their daily basic goods and resources.

Furthermore, in the last Security Council meeting taking place on 27 March 2019, the US representative called to mind that the war in Syria started when Assad began to attack his own people. The Russian Federation warned against the implementation of Western sanctions on Syria, as such unilateral measures only worsened the humanitarian situation.

Venezuela

During the crisis in Venezuela, the United States of America, the European Union, Canada, Mexico, Panama and Switzerland applied individual sanctions against people associated with the administration of Nicolás Maduro.

For more than a decade, the USA has employed sanctions as a policy tool in response to activities of the Venezuelan individuals and government. These have included restrictions related to terrorism, drug and people's trafficking, antidemocratic actions, human rights violations, and corruption.

In 2013, Maduro was elected as president of the country continuing the Chavez policy, under which the Venezuelan oil reserves were nationalized. The USA, being dissatisfied from this policy, applied an illegal financial embargo, which was one of the reasons for the extreme poverty and inflation that prevail in the country.

European Union

Unilateral sanctions have become an increasingly central tool of the EU's common foreign policy. Today, the EU has 42 sanction programs in place and, additionally, according to the EU sanctions constitution, these can be enforced on a country for a maximum period of one year.

Although the EU used trade embargoes in the past, it now has moved to measures, like asset freezes and visa bans, targeted at companies or even individual people. Apart from sanctions, the Union's coercive measures also include sectoral trade and investment restrictions, arms embargoes to countries, such as China, Sudan and Yemen, as well as trade preferences and suspensions of development aid. The efficiency of those measures, however, is difficult to estimate, due to the fact that sanctions rarely achieve their goals.

TIMELINE OF EVENTS

DATE	DESCRIPTION OF EVENT
Since 19 October 1960	Cuba faces the illegal, extraterritorial and comprehensive US embargo for political reasons.
Since 4 November 1979	Unilateral USA sanctions against Iran due to its peaceful nuclear activities.
Since 14 November 1979	Comprehensive economic coercion of Syrian regime because of attacking Syrian citizens, etc.
Since 6 August 1990	UN Security Council resolution 661 implements economic sanctions and an embargo on Iraq as a punishment for its invasion to the adjacent Kuwait.
1 January 1995	Foundation of the WTO.
Since 8 January 2002	The EU, ECtHR and 10 countries have sanctioned multiple times ISIL (Da'esh) and Al-Qaida for terrorism.
Since 5 December 2013	The UN imposes sanctions on the Central African Republic responding to the continuing deterioration of the security situation in the country.
Since 7 August 2014	Russia faces sanctions for the illegal annexation of Crimea.

Since 11 December 2014	Sanctions against the administration of Nicolás Maduro in Venezuela for several violations of international law.
Since 7 February 2017	China and the USA intervene financially to DPRK with regard to its nuclear program.
Since 31 March 2017	The EU sanctions Libyan regime for threatening the peace, security or stability of the country.
Since 17 April 2019	The US places economic sanctions against Nicaragua, an act which was ruled from the ICJ as unconstitutional and a violation of international law.

RELEVANT UN RESOLUTIONS, TREATIES AND EVENTS⁷

-Security Council Report S/1999/92

calls for the improvement of the sanctions committees, the better supervision of sanctions and the increase of humanitarian help to the affected countries.

-Resolution A/AC.182/L.114/REV.2

declares the basic conditions and standard criteria for the introduction and implementation of sanctions imposed by the United Nations General Assembly.

-Resolution A/HRC/37/NGO/51

addresses the humanitarian impact of comprehensive sanctions, taking Cuba as an example, and proposes solutions to the issue.

PREVIOUS ATTEMPTS TO SOLVE THE ISSUE

⁷ "UN, United Nations, UN Treaties, Treaties." United Nations, United Nations, <https://treaties.un.org/>.

International organizations, such as the World Trade Organization (WTO), being aware of the economic damage and humanitarian threat sanctions pose to a country, seek to ease some of the pressure and create panels to objectively examine disputes among states. Additionally, the World Food Program (WFP) and the UN International Children's Emergency Fund (UNICEF) are two further organizations that carry out vital humanitarian assessments and provide services to nations and groups in need.

POSSIBLE SOLUTIONS

Set ground rules to the implementation of sanctions

The UN and the international community should set ground rules concerning economic measures, like sanctions. These principles should work as a foundation for the use of coercive measures and should be legally-binding for all member states in order to assure that poor relations between states do not lead to illegal actions. One ground rule could be, for example, that economic intervention should follow only if the means and the object have not succeeded into meeting a consensus during diplomatic negotiations.

Set attainable goals

Sanctions aimed at changing the target country's regime or at offering the country little recourse are likely to fail and shouldn't be imposed.

Credibility and flexibility of sanctions

The target state must rely on the fact that sanctions will be increased or reduced depending on its comportment.

Strengthen the fairness and clarity of the procedure

A convention/treaty should be ratified by the country imposing the sanction and followed by all means. In this way, a violation of international law will be prevented as well as the overuse of the sanctions for national profit. Extremism and extreme poverty in the sanctioned country will decrease as long as the latter complies with the measures set by the international community.

Penalties

Penalties (e.g., the exclusion from international competitions and global events) on nations that do not follow the international law while imposing the sanction should be suggested so that to avoid such kind of behavior in the future.

Better supervision

The UN, the EU and other similar alliances and organizations should act as observers and supervisors regarding when and where the sanctions are applied and monitor the situation in the sanctioned state.

Humanitarian aid

International organizations, such as the WFP, UN Educational, Scientific and Cultural Organization (UNESCO), UN Development Program (UNDP) and UNICEF, should strengthen the provision of humanitarian aid to the affected state in order to ease the impact on the country's population.

More direct sanctions from states and the UN Security Council

Apart from the economic damage sanctions cause to a country, they also pose a threat to its inhabitants. In order for the regime of the targeted nation gets affected and not its citizens, member states should sanction specific people or companies and avoid to impose sweeping sanctions taking the EU as an example. In that way, the threats presented could be more direct and therefore more efficient.

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Graphs

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