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Declaration

I herewith declare that this dissertation titled “**Economic Sanction and Public International Law: An Overview**” has been carried out by me under the supervision of Dr. Md. Mehedi Hasan, the respected Chairperson & Assistant Professor of the Department of Law. This is my original work and information used for this research has been duly acknowledged. This dissertation has not been submitted for any other degree before. I have not published this work in any, Website, Newspaper or Journal.

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Abstract

Economic sanctions or economic restriction has been very frequent in recent times. This study was concluded to find out if use of economic sanctions are justified under international law and what are the norms of international law regarding economic sanctions. International law does not address this properly. UN charter allows UNSC to take action when there is a threat to world peace and security but such use of word is quite vague and it also dose not address the sanctions imposed by individual states which creates more confusion regarding its legality which is discussed further in this study. Many times, sanctions fail to achieve their goal but still cause great damage to the targeted states economy and human right situation of such state. As we saw in case of Myanmar and South Africa that they were mostly able to evade sanctions imposed on them but still the economy and the citizen suffered a lot due to the effects of such economic sanctions imposed on them. During this study it was observed that even though economic sanction can be a good alternative of armed conflict many times it causes more harm than good.

List of Abbreviation

AU	African Union
CJEU	Court of Justice of the European Union
EU	European Union
EEC	European Economic Community
GNP	Gross National Product
ICJ	International Court of Justice
NLD	National League for Democracy
RAB	Rapid Action Battalion
RSA	Republic of South Africa
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom
UN	United Nations
UNICEF	United Nations Children's Fund
UNSC	United Nations Security Council
US	United States
WMD	Weapons of Mass Destruction

Economic Sanction and Public International Law: An Overview

Chapter 1

Introduction

1.1 Introduction to Economic Sanctions

Economic sanctions are used by a state or a group of state to restrict trade and financial transaction with targeted state to penalize states which violate international law and threatens the world peace.¹ It is also used to influence their economic and political decisions. Economic sanctions can be of two type Multilateral economic sanction and Unilateral economic sanction. When a state alone enforces economic sanction against another state that is called Unilateral sanction and when two or more states or members of any international organization enforces economic sanction against another state that is called multilateral economic sanction.² Unilateral sanctions are different from multilateral sanction, unilateral sanction promote self-interest and lack consensus. The state that enforces economic sanction against another state is called sender state and the state against whom a sanction is imposed is called targeted state. Economic sanctions have become very frequent in recent decades.³ Many states are using economic sanction as part of their foreign policy to influence targeted state's political and economic decisions in their favor.

1.2 Objective of the Research

This study aims to identify the norms of international law regarding economic sanctions (if any). This study will examine different types of economic sanctions, how they work, how international law approach such sanctions and how different types of economic sanctions affect different states. This study will analyze different economic sanctions imposed against state how

¹ Brent Radcliffe "How Economic Sanctions Work" (Investopedia, July 06, 2022) <https://www.investopedia.com/articles/economics/10/economic-sanctions.asp> Accessed on January 15, 2023.

² Brent Radcliffe "How Economic Sanctions Work" (Investopedia, July 06, 2022) <https://www.investopedia.com/articles/economics/10/economic-sanctions.asp> Accessed on January 15, 2023.

³ Delevic, Milica. "Economic Sanctions as a Foreign Policy Tool: The Case of Yugoslavia." International Journal of Peace Studies (1998) 3 (1): 183–208 http://www.gmu.edu/programs/icar/ijps/vol3_1/Delvic.htm Accessed January 15, 2023.

such state dealt with such sanction and whether such sanctions can be called a success. This study will discuss judicial cases to try and understand how the international law approaches such economic sanctions. This research will try to find out whether such economic sanctions are appropriate measure or they are unfair toward the targeted state.

1.3 Methodology

This study is supported by both qualitative and doctrinal research. This study uses UN charter, Treaty and international law principles as its primary source and articles, magazine, news articles and books as its secondary source.

1.4 Limitations

This study has many limitations. This study mainly uses secondary data. This study did not conduct any survey. This study is done within a short period of time. As a result, this study does not go very deep into this matter. This study mainly focuses on UN charter, EU regulations and some established principals of public international law. At the time of this study there was no access to any paid or subscription website. Resources available online was very limited. There is very limited judicial review and case data available online.

1.5 Research Questions

This research paper will peruse two research questions:

Are uses of economic sanctions justifiable under public international law and principles?

What is the norm of public international law relating to economic sanctions?

1.6 Conclusion

Economic sanction can be of different types, Different economic sanction is imposed on different states. multilateral or unilateral both of them leave their own effect in a state's economy and in the life of its citizens. This study will try to understand the intended use of economic sanction. It will discuss the current uses of economic sanction and their effect on the economy and legality of such sanctions under public international law and principles.

Chapter 2

Legality of Multilateral Economic Sanctions

2.1 Introduction

When multiple states or international organization enforce economic sanction against another state such sanctions are called multilateral economic sanction.⁴ Multilateral economic sanctions are enforced to maintain international peace and harmony. In recent times such sanction has become a very important part of UN and EUs foreign policy because it allows them to take measurements against any state without going into any armed conflict with them.⁵ It is also considered cheapest measure that can be taken against a state to control their international policies because it dose not include any type of military action. Use of armed force also put the world peace at risk of being disrupted. Most of the time when armed force is employed there isn't much room for negotiation because in case of armed conflict no one wants to back down in fear of showing weakness. By the time any of the involved party is ready to negotiate most of the damage is already done. So such economic sanction gives states to take measurement against another without risking the world peace and getting involved in years long armed conflict.

2.2 Provisions of UN Charter

After the first World War in 1919 the league of nation was established but it failed miserably to maintain the balance of power and peace between the countries. Even though there were provisions to punish countries for violating international law, such punishment mostly was toothless bite. Most of such sanctions were not implemented correctly, many of the state of the league ignored such punishment and continued their international relationships with the targeted state making the league useless. The failure of leagues economic sanction system made United States believe that they should use military action instead of any economic strategies in response of Japan's attack on Pearl Harbor.⁶ So, after the second World War in 1945 United Nation was created and the UN charter CHAPTER VII Article 41 allows the security council to enforce any measure not involving armed force such as economic sanction, severance of communication and diplomatic relation.⁷

⁴ Brent Radcliffe "How Economic Sanctions Work" (Investopedia, July 06, 2022)
<https://www.investopedia.com/articles/economics/10/economic-sanctions.asp> Accessed on January 15, 2023.

⁵ Larissa van den Herik, ' Research Handbook on UN Sanctions and International Law' (Research Handbooks in International Law 2017)

⁶ Enrico Carisch, Loraine Rickard-Martin & Shawna R. Meister, The Evolution of UN Sanctions From a Tool of Warfare to a Tool of Peace, Security and Human Rights (Springer International Publishing AG 2017)

⁷ UN Charter

On 1966 UN first enforce sanction on Southern Rhodesia by 11-0 vote with 4 abstentions. The security council imposed an embargo on almost 90 per cent of Rhodesia export and forbade all member states to not sell any arms, aircraft, oil or to give them any financial support.⁸ Since 1966, the Security Council has established 29 more sanctions regimes, starting from South Africa, the former Yugoslavia (2), Haiti, Iraq (2), Angola, Rwanda, Sierra Leone, Somalia and Eritrea, Eritrea and Ethiopia, Liberia (3), DRC, Côte d'Ivoire, Sudan, Lebanon, DPRK, Iran, Libya (2), Guinea-Bissau, CAR, Yemen, South Sudan and Mali, as well as against ISIL (Da'esh) and Al-Qaida and the Taliban.⁹

Under the UN charter CHAPTER VII Article 39 The Security Council will determine the existence of any threat to the peace, breach of the peace, or act of aggression as it seems fit and shall make recommendations, or decide what measures shall be taken. There is no definite definition or indication of what is considered a threat to peace and what can be considered an act of aggression.¹⁰ The provision of UN charter is very vague and it leaves everything up to The Security Council to decide whether to consider something a threat to peace or not.¹¹

2.3 Norms regarding Multilateral Economic Sanctions

International organizations like UN and EU imposes economic sanction to achieve their political objective. Economic sanction has become very popular in recent decades but it wasn't well practice before 1990.¹² From 1945 to1990 economic sanction was imposed by The Security Council only twice against Rhodesia and South Africa but within 1991-1994 The UN Security Council imposed 8 economic sanctions. According to the UN sanction background report EU has imposed sanctions in 48 cases and AU has imposed sanctions in 11cases.¹³ Unlike the UN, the EU has never used complete trade embargoes against any state but it dose targeted sanctions such as bans on arms, trade in specific products, travel, diplomatic and financial sanctions.¹⁴ EU uses its economic sanction as part of its foreign policy. EU imposes sanction to ensure a better position of its member state economically and politically.

Both UN and EU imposed sanction against Iran in response to its nuclear enrichment program. The UNSC considered the nuclear enrichment program a threat to the international peace under

⁸ UN sanction on Southern Rhodesia

https://www.un.org/dppa/decolonization/sites/www.un.org.dppa.decolonization/files/decon_num_5-2.pdf

⁹ UN Website <https://www.un.org/securitycouncil/sanctions/information> accessed October 29, 2022.

¹⁰ UN Charter

¹¹ UN Charter

¹² Delevic, Milica. "Economic Sanctions as a Foreign Policy Tool: The Case of Yugoslavia." *International Journal of Peace Studies* (1998) 3 (1): 183–208 http://www.gmu.edu/programs/icar/ijps/vol3_1/Delvic.htm Accessed January 15, 2023.

¹³ UN sanction report <https://www.securitycouncilreport.org/un-documents/sanctions/> Accessed on November 15, 2022.

¹⁴Monika Heupel & Michael Zurn, *Protecting the Individual from International Authority: Human Rights in International Organizations* (Cambridge Univ. Press 2017)

Chapter VII of the UN charter. This allowed the UNSC to impose sanction on Iran under Resolutions 1737(2006), 1747(2007), 1803(2008), and 1929(2010).¹⁵

UN, EU, AU such international organizations many times impose economic sanctions to punish and control Internationally Wrongful Act to maintain international peace. If an act of a state toward another state is not compliance with the international law the later state can take countermeasure against the first state for the wrongful act.¹⁶ Economic sanction is many times imposed as a counter measure for internationally wrongful act but Such countermeasure has to be proportional, gravity of the act must be taken into account before enforcing any countermeasure.¹⁷

Sometimes the UN sanction and countermeasure under Art 22 of Responsibility of States for Internationally Wrongful Acts 2001 is confused. The UN sanctions under CHAPTER VII is not exactly a countermeasure necessarily. The countermeasure usually is taken by a state against whom an internationally wrongful act is done but UN sanction can be taken by UNSC if they identify a threat to the international peace and security under CHAPTER VII Article 39 and can take measure not involving armed force under CHAPTER VII Article 41.¹⁸

2.4 Effect of Multilateral Economic Sanctions

Such sanctions are heavily criticized by many scholars because they violent human rights of the citizens of the targeted state as such sanctions affect the mass population without discrimination.¹⁹ Such sanctions heavily impact on the state's development especially on the developing countries as dispute their most effort they fail to maintain their international trades to continue their development momentum. Even though the citizens of the targeted state suffer a lot, most of the state still does not accept the condition of the economic sanctions so such measures often fail to control the targeted state.²⁰ A complete trade embargo puts a state many years behind because without international trade their foreign currency reserve would drop drastically making their currency weak. Without international trades many sectors which need to import raw material to function would fail causing import\export related sector to close down or go bankrupt. Such close down of big institutions increase unemployment problem increasing the suffering of the general people.

¹⁵ UN sanction report <https://www.securitycouncilreport.org/un-documents/sanctions/> Accessed on November 15, 2022.

¹⁶ Responsibility of States for Internationally Wrongful Acts 2001 Art 22

¹⁷ Responsibility of States for Internationally Wrongful Acts 2001 Art 51

¹⁸ UN Charter

¹⁹Dursun Peksen, 'Economic Sanctions and Human Security: The Public Health Impact of Economic Sanctions' (2011) 7(3) 237–251, Foreign Policy Analysis <https://doi.org/10.1111/j.1743-8594.2011.00136.x> Accessed on December 31,2022.

²⁰Dursun Peksen, 'Economic Sanctions and Human Security: The Public Health Impact of Economic Sanctions' (2011) 7(3) 237–251, Foreign Policy Analysis <https://doi.org/10.1111/j.1743-8594.2011.00136.x> Accessed on December 31,2022.

2.4.1 Republic of South Africa

South Africa was one of the first states to face the economic sanction by the UN. UN imposed sanction on South Africa because of its social conflicts. Many conflicts like Sharpeville massacre on 1960 killing or wounding about 250 people,²¹ the Soweto uprising of 1976 and the mid-1980s states of emergency made UNSC believe that if such conflict continue to go on it may become a threat to world peace and security. On 1963 UNSC imposed a voluntary arms embargo on RSA which was made mandatory on 1977. The EEC imposed arms and oil embargo on 1985 and by 1986 it banned coal, steel, any new investment and gold coin.

The oil embargo was expected to be very effective against RSA because it was completely dependent on other state for this natural and very important resource. But the RSA was able to minimize this problem by using their coal resource to make oil from coal which allowed them to reduce their dependency for about 40 per cent on petroleum. The RSA also increased their networking and started importing oil from the black markets.²²

RSA was dependent on UK for its arms imports. After the embargo on arms enforced the RSA put on an effort to be self-sufficient in this sector. They established Armaments Production Board with an aim to be self-sufficient in arms. It started to establish black market network which allowed them to get their hands on the latest technology which they pirated and started to make for them-self.

Even though the RSA was mostly able to bypass the oil and arms embargo imposed on them but it was not an easy road to walk on. They had to pay a high price to overcome such sanction. The sanctions were not successful as it failed to make RSA follow UNSC and EEC instructions. But it still cost a lot for RSA as it lost income from exports and suffered environmental damages costing around 34.6 billion US Dollar²³ and it had to enable many projects to bypass the sanction costing around 15.2 billion US Dollar.²⁴

2.4.2 Republic of Iraq

In 1990 Iraq invaded Kuwait violating international law and disrupt world peace. The UNSC imposed most strict sanction on Iraq banning all exports and any type of financial transaction.²⁵ But this sanction failed to force Iraq to comply with UNSC. So, in 1991 Iraq was defeated and forced out of Kuwait. After that the UNSC passed resolution 687 to maintain the embargo.

²¹ Britannica, The Editors of Encyclopaedia. "Sharpeville massacre". Encyclopedia Britannica, 14 Mar. 2022, <https://www.britannica.com/event/Sharpeville-massacre> Accessed January 2 2023.

²² Lee Jones, *Societies Under Siege Exploring How International Economic Sanctions (Do Not) Work* (Oxford University Press 2015)

²³ Hengeveld, Richard and Rodenburg, Jaap. Marc Rich: Fuel for Apartheid'. In *Embargo: Apartheid's Oil Secrets Revealed* (Amsterdam: Amsterdam University Press.)

²⁴ Lee Jones, *Societies Under Siege Exploring How International Economic Sanctions (Do Not) Work* (Oxford University Press 2015)

²⁵ UNSCR, 661

Iraq's economy was heavily relied on its oil export revenue because about 96 per cent of its exports were oil. Many of the government sectors was relied on the revenue of the oil export. With the embargo on export Iraq's government income dropped from 522 million US Dollar to 72 million US Dollar stopping its government to function. Iraq's economy was very dependent on imports as 80 per cent of its capital good and foods costing over 2 billion US Dollar was needed to be imported annually.²⁶ So the sanction caused a huge lack in supply of capital goods and food, causing food prices rising by 1500-2000 per cent.²⁷ On the other hand people are earning less. Government and privet sectors did not have enough money to give out to its employees. The government had to cut the wages to keep all the employees employed. The privet sector had to lay of a major portion of its man power to keep going. The government had to cut wages of its employee for about 62 per cent and privet sector had to cut about 17 per cent for skilled and 43 per cent for unskilled employees.²⁸ The government had to print money to keep itself running which resulted in hyperinflation. Iraq soon realized that it cannot survive if nothing is done to the sanctions imposed on it. So, the government soon tried to comply with all the UNSC condition to get the sanctions lifted. So, they created a National Monitoring Directorate to promote their eagerness to comply with the UNSC conditions.²⁹ In mid-1991 Iraq completely started to comply with the UNSC demand. Iran destroyed most of its arsenal of weapon of mass destruction. Iraq had biochemical weapon and missiles of prohibited range in its arsenal. But they were so cornered by the sanctions that they destroyed all the WMD, facilities used for that purpose and even all the research done by them in pursuing those. They were destroyed them without leaving any way to revive them later on.

So, it can be said that the sanction was a success as it was able to make Iraq comply with UNSC demands. But in the in the process about 1.5 million people died suffering from the starvation according to Iraq government. The UNICEF estimated the number to be around 400,000-500,000 among children under five by 1998.³⁰ Seeing The number of deaths caused by the sanction questions comes to mind whether such sanctions were actually worth it for what it has cost. But such question did not rise in some peoples mind as on because according to US Secretary of state Madeleine Albright deaths were definitely 'worth it' because it achieved its goal in forcing Iraq to reveal its WMD arsenal and had to recognize Kuwait.³¹

²⁶ Al-Kudayri, Tariq, Iraq's Manufacturing Sector: Status and Prospects for Rehabilitation and Reform, InIraq's Economic Predicament (Ithaca Press 2002.)

²⁷ Alnasrawi, Abbas, The Economy of Iraq: Oil, Wars, Destruction of Development and Prospects, 1950–2010 (Westport: Greenwood Press 1994)

²⁸ Gazdar, Haris and Hussain, Athar, Crisis and Response: A Study of the Impact of Economic Sanctions in Iraq, (kamil Mahdi ed, Ithaca Press 2002)

²⁹ uelfer, Charles, Comprehensive Report of the Special Advisor to the DCI on Iraq's WMD, Washington, D.C.: CIA 2004. <https://www.govinfo.gov/app/details/GPO-DUELFERREPORT> Accessed on January 5, 2023.

³⁰ Baram, Amatzia, 'The Effect of Iraqi Sanctions: Statistical Pitfalls and Responsibility' (2000) 54(2), Middle East Journal 194

³¹ Leslie Stah, Madeleine Albright, U.S. Secretary of State (CBS Sixty Minutes, 12 May 1996)

2.4.3 The Republic of the Union of Myanmar

In 1988 Myanmar's the then Burmese Socialist Programme Party's government collapsed during heavy protest and a bloody military coup. Junta came into power by the military coup and after coming in to power he promised that he would give an election on 1990 to hand over power to a stable government. He promised to return the army to barracks after the multiparty election in 1990. The election held on 1990 was relatively free and as a result National League for Democracy won the election with 60 per cent of vote and which was able to secure them 81 per cent of the seats. After such victory the NLD demanded to transfer the power immediately.³² But Junta refused to do so in fear of political chaos and also for their own safety as the NLD indicated before the election that they might take the leading generals to trial for their wrongdoing which concerned Junta. As a result, EU imposed arms embargo and confined all aids to humanitarian purposes in 1990. In 2000 EU expands travel bans and freezes assets of 140 people. Between 2000-2008 US, Japan, Australia, Canada imposed many travel bans, asset freezes and suspension of aids.

These sanctions did not affect the function of the government very much. But some sectors were hit hard by the sanctions. Garments was one of the sectors that took a big hit from the sanctions. Due to the sanctions imposed the garments exports fell from 582.8 million US Dollar to 282.7 million US Dollar in between 2001-2007. About 75 per cent factories had to shut down employing about 340,000 workers.³³ The tourism was also impacted badly. Myanmar lost a huge number of tourist due to the sanctions and this sector had to suffer a lot of revenue losses. The arms embargo had the least impact of any other sanction as China, Singapore and Russia continued to import arms they did not had much problem in this matter. China and Russia alone bought 2.48 billion US Dollar worth of arms from Myanmar in between 1989-2010.³⁴

Even though some sectors were heavily impacted by the sanction but the military government was mostly able to evade them all.³⁵ The regime did not suffer as much as its people did. So, whether the sanction on Myanmar was a successful one is still a question.

³² TONKIN, DEREK. "The 1990 Elections in Myanmar: Broken Promises or a Failure of Communication?" (2007) 29(1) Contemporary Southeast Asia, <<http://www.jstor.org/stable/2579881>> Accessed December 3, 2022.

³³ Yangon, Zaw Win Min and Khine Khine Nwe, Vice-President and Joint General-Secretary of the Union of Myanmar (13 July 2012)

³⁴ World Bank. 2012. 'Arms Imports (Constant 1990 US\$)', <http://data.worldbank.org/indicator/MS.MIL.MPRT.KD>

³⁵ Lee Jones, *Societies Under Siege Exploring How International Economic Sanctions (Do Not) Work* (Oxford University Press 2015)

2.5 Conclusion

Multilateral sanctions are imposed by states and many international organizations like UN, EU and AU. The purpose for such sanctions is to maintain world peace and security. But many times, such sanctions fail to achieve their goal even after economically crippling targeted states. Many times, the sanctions fail to make the targeted state to comply with their conditions or demands while still making the life of the citizens full of suffering. Many times, the Targeted states were able to evade from the sanction and maintain their political position. Even when the sanctions were successful objectively, but when the suffering of the citizen and death of thousands of innocent people is taken into account the question still remains, was the sanction a successful one even at such cost.

Chapter 3

Legality of Unilateral Economic Sanctions

3.1 Introduction:

Unilateral economic sanctions are different from Multilateral economic sanction. In multilateral economic sanction two or more states enforces economic restriction against the targeted state but in case of unilateral economic sanction a state alone imposes economic sanction against another state. This chapter will mainly focus on the legality of unilateral sanction under Public International Law. Unilateral sanctions are used by different states for different purpose. They usually uses such sanctions to change behavior of targeted state or to limit their access to resources which is needed to perform certain activities or to signal and stigmatize them to assert senders dominance.³⁶ Unilateral sanction is mostly used to enforce states political agenda. Many states are imposing unilateral sanction as part of their foreign policy. Many states use it as counter measure for any internationally wrongful act.³⁷ This will discuss the legality of unilateral economic sanction and secondary economic sanction and discuss its effect in light of some examples of its uses.

3.2 International law Regarding Unilateral Economic Sanction

Unilateral economic sanctions are not compliant with international laws because UN charter allows collective measurements, even that is only after the UNSC approve of such action.³⁸ The UN Charter dose not have any provision allowing any state to take any economic measure against another state. The UNSC can take measurement only if it thinks the action of targeted state is a threat to world peace and security.³⁹ Some argue that even though no provision allows unilateral sanction, no provision dose not expressly prohibit it either. But unilateral sanctions also contradict with established international principals. According to the territorial principal each state is entitle to regulate conduct within its own territory. It's a basic principle of international law that domestic law is only territorial in nature.⁴⁰ But many state enact domestic laws to enforce economic sanction on other state. So unilateral sanction violates this principal as it gives extra-territorial effect of their domestic law which affect other states territory.

³⁶ Larissa van den Herik, ' Research Handbook on UN Sanctions and International Law' (Research Handbooks in International Law 2017)

³⁷ Responsibility of States for Internationally Wrongful Acts 2001

³⁸ UN Charter Chapter VII Art 41

³⁹ UN Charter Chapter VII Art 39

⁴⁰ North Atlantic Coast Fisheries, United Kingdom v. United States, 11 R.I.A.A. 167, 180

3.3 Secondary Economic Sanctions

When a state imposes unilateral sanctions against targeted state, many times such sanctions don't achieve their goal because the targeted state can evade the sanctions by improving their economic relations with a third state to maintain their economic transactions and international trades. To prevent this from happening many states impose secondary sanctions against third state to stop them from continuing their trade relations with the targeted state. Secondary economic sanctions are very criticized by many scholars. Unilateral sanctions are in itself very criticized because of their extra-territorial nature. So, when a state imposes sanctions against third state to enforce their unilateral economic sanctions, the legality of the sanctions against third state is rightfully in question.

3.4 Effect of Unilateral Economic Sanctions

Many states fall victim of unfair unilateral sanctions. Many states target other to gain upper hand in economic competition between those states. Some states even apply secondary sanctions on a third state who continues to do international trades with the targeted state. US is the world leader in unilateral sanction. They actively use unilateral sanction in their foreign policy. China is also high on the sanction sender list right after US. China uses a different approach than US in using unilateral sanction. They use sanction left and right to force other states to follow their lead. The targeted state many times have no option but to follow them because they would not be able to survive the pressure that comes with the sanction.

3.4.1 US Sanction

US and Iran had a good relationship, in early 1950 US even helped Iran in developing their nuclear program. But after a Post-Revolution Hostage crisis in Tehran US embassy, the relation between the two states shattered. US first sanctioned Iran after the hostage crisis in Tehran in 1979. US president ordered to freeze all Iranian assets.⁴¹ Most of the sanctions were targeted toward trade of Iran's oil recrosses. During 1990 US implemented dual containment policy targeting Iran and Iraq. In 1990 US and UN imposed sanctions on Iraq also for invading in Kuwait. In 2006 a new financial sanction was implemented by the US treasury banning all activity with Saderat Bank because it transferred money to a terrorist organization.⁴² Iran's Banking industry got hit because sanctions blocked many international transactions.

China is the second largest economy in the world right after US, China is continuously threatening its position on the top. US and China have problems since 1949. From 1949 to 1971 US had imposed embargo on all trade with China. Even after the sanctions were lifted US

⁴¹ Executive Order No. 12170, 44 F.R. 65729 (14 November 1979).

⁴² U.S. Department of the Treasury, Treasury Cuts Iran's Bank Saderat off from U.S. Financial System, 9 August 2006 < <http://www.treasury.gov/press-center/press-releases/Pages/hp87.aspx>.>

restricted its exports of military goods and dual used technologies.⁴³ US imposed sanctions on China for human rights violation. US has put sanction on China based technology companies so no US company can sell their latest chipmaking technologies and artificial intelligence so that the Silicon Valley can maintain dominance in the world.

Russia has been a prime target for US sanction. US and Russia have had tension between them for a long time. US has been enforcing sanctions against Russia for invading its neighboring countries. Russia invaded Crimea in February 2014 in the aftermath of Ukraine's Revolution of Dignity. Russia tried to argue that it was complying with people's self-determination right. But US was not convinced. The annexation of Crimea gives Russia access to the naval base at Sevastopol. This base is of very importance to Russia as it helps Russia to maintain its power around black sea. Crimea also gives Russia access and influence over Ukraine. In response to which US imposed many sanctions against Russia. US froze assets of specific entities and prohibit US individual to do any transaction with them. These entities included state owned banks, energy sector, financial services. US also put-up restrictions on military equipment, oil related item and dual use technologies.⁴⁴

US imposed sanction on Bangladesh in 10 December, 2021. Sanctions were imposed on Rapid Action Battalion (RAB) and 7 officials in responses to allegations of extreme human rights violation such as extra judicial killing, torture and enforced disappearance.⁴⁵ US was one of its supporters along with UK since its founding time 2003. They provided RAB with training. But as RABs actions became questionable so did the US support of RAB. To clear the allegations of US support of human right violation sanctions were imposed on 10 December 2021. But such sanction did not have much impact on the economy.

US has many times imposed secondary sanctions on a third-party state to improve the effectiveness of Their economic sanction which hugely impact on the relationship between the states.

3.4.2 China

Since the start of the republic in 1949 China has used economic relation to favored their political strategies and idols. China uses a different approach in pursuing unilateral economic sanctions. China does not apply unilateral economic sanctions officially. They use sanctions without incorporating them in their domestic law. In 2009 French officials declared that the then president Nicolas would visit Dalai Lama and in response China didn't announce any official sanction but it postpone 11th EU-China summit and froze 150 plane order from airbus.

⁴³Nicholas R. Lardy, *China in the World Economy* (Peterson Institute Press: All Books 1994)

⁴⁴ Jana Ilieva, Aleksandar Dashevski, and Filip Kokotovic. *Economic Sanctions in International Law*, (2018) 9 (2): 201–211. *UTMS Journal of Economics*. <
<https://www.utmsjoe.mk/files/Vol.%209%20No.%202/UTMSJOE-2018-0902-09-Ilieva-Dashevski-Kokotovic.pdf>> Accessed on December 25, 2022.

⁴⁵ Ali Riaz, 'Sanctions against Rab and the shifts in US policies' *The Daily Star* (23 December, 2021) <https://www.thedailystar.net/opinion/black-white-and-grey/news/sanctions-against-rab-and-the-shifts-us-policies-2922766> Accessed on January 3, 2023.

France was left out of 15 billion US Dollar trade deals. And after the actual visit the France export to China dropped by 12.5 per cent for next two years.⁴⁶

In 2010 a Chinese vessel traveled into disputed maritime region so Japan's Coast Gard arrested them. Japan soon releases its crew but held its captain for 8 days. On September 21 Japanese company reported that their shipment of Rare Earth Elements has been all blocked by Chinese customs. Japan released the captain after 3 days but the shipments were not back to normal until November.⁴⁷

3.4.3 Russia

Russia has always been a very vocal about the legality issues of unilateral sanctions. It has always challenged the legality of sanction that has been taken against it. But in recent years Russia has also started to use economic sanctions. Most of the time the sanctions were imposed in response to sanctions that has been brought against it. Russia has also imposed sanctions against neighboring countries for geopolitical reasons. In recent times because of Russia – Ukraine conflict Russia has been subjected to many sanctions. On 3rd April 2017 Russian president signed federal law no 59-fz restricting transfer of money out of Russia to the countries who have restricted the use of Russian payment system in their country.⁴⁸ On 1 march 2022 Russian president ordered according to which the Russian residents cannot do transaction with foreign person of sanctioning countries without the permission of the Governmental Commission for Control Over Foreign Investments in the Russian Federation.⁴⁹ On 5 August 2022, Russian president signs an order which bans dealing with capital of 45 foreign owned banks in order to prevent foreign investor to pull out their investments from Russia till the end of the year.⁵⁰

⁴⁶Andreas Fuchs Nils -Hendrik Klann, Paying a visit: The Dalai Lama effect on international Trade (2013) Journal of International Economics Volume 91, Issue 1,, Pages 164-177 <<https://doi.org/10.1016/j.jinteco.2013.04.007>> Accessed January 3, 2023.

⁴⁷ Keith Bradsher and Edward Wond, "China's Ban on Selling Rare Earth Minerals to Japan Continues," *New York Times*, (November 10, 2010) <https://www.nytimes.com/2010/10/11/business/global/11rare.html> Accessed on 3 January 2023.

⁴⁸ Natalia Selyakova, 'Russia restricts money transfers to countries barring "Russian payment systems" (Dentos,11 April,2017) <<https://www.dentos.com/en/insights/alerts/2017/april/11/russia-restricts-money-transfers-to-countries-barring-russian-payment-systems>> Accessed on January 10, 2023.

⁴⁹ Dmitri V. Kovalenko Inara V. Blagopoluchnaya Robin F. Marchant Sergey Chapaev, Russia Restricts Transactions With Nationals of Sanctioning Countries and Further Limits Transfers of Funds Abroad (Skadden, 2 March 2022) <https://www.skadden.com/insights/publications/2022/03/russia-restricts-transactions-with-sanctioning> Accessed on January 5, 2023.

⁵⁰ Louise Heavens, 'Russia bans dealing in capital of 45 foreign-owned banks or banking units'(Reuters, 26 October 2022) <https://www.reuters.com/business/finance/russia-bans-dealing-capital-45-foreign-owned-banks-or-banking-units-2022-10-26> Accessed on January 5, 2023.

3.5 Conclusion

The use of Unilateral Economic Sanction is increasing in an alerting rate in recent times.⁵¹ States are using it more and more frequently. Many states are using it as part of their foreign policy on a regular basis which is very disturbing. Unilateral sanctions have a big effect on the human right situation in the targeted states. Many times, these restrictive measures are put against the targeted state without any reasonable diplomacy or negotiation so the targeted state have no other option but to come up with their own list of economic sanction and target the sender state as a response. But such economic sanction dose not help anyone but degrade the human right situation and the quality of life in both of the country. Use of such sanction is very questionable when it is extra territorial in nature. Which violate the territorial principal, which is one of the basic principles of international law.

⁵¹ Delevic, Milica. "Economic Sanctions as a Foreign Policy Tool: The Case of Yugoslavia." *International Journal of Peace Studies* (1998) 3 (1): 183–208 http://www.gmu.edu/programs/icar/ijps/vol3_1/Delvic.htm Accessed January 15, 2023.

Chapter 4

Judicial Issues

4.1 Introduction

Economic sanctions have been a very interesting topic in international arbitration and court of justice. There is no clear law or principal establishing their jurisdiction over the matter. So even if an economic sanction violates a state's sovereignty and human right condition of the citizen, many states have nothing to do but respond to it with their own list of economic sanction. But this kind of sanction and counter sanction most of the time only hurt the economy of both states. The only way to establish jurisdiction of a tribunal or ICJ is if the states are party to a treaty and such treaty gives the tribunal or the ICJ jurisdiction over the matter. So, this chapter will try to discuss judicial issues regarding economic sanction. In this chapter firstly it will be discussed how CJEU cleared vagueness and confusion regarding legal person then this chapter will discuss how ICJ dismissed economic sanction and upheld treaty obligation.

4.2 Judicial Issues Regarding Multilateral Economic Sanctions

In 2017 the council of the European Union applied economic measures against Venezuela in response of alleged deterioration of democracy, the rule of law and violation of human right in that state.⁵² On 6 February Venezuela brought an action to repeal such provision regarding sanction on Venezuela. The general court of European union dismissed the action as inadmissible as the legal situation of Venezuela was not directly affected by contested provisions of the economic measures.⁵³

Venezuela filed an appeal before The Court of Justice under 4th paragraph of article 263 of The Treaty on the Functioning of the European Union which allowed any natural or legal person to institute a proceeding in The Court of Justice. Now the question before the court was whether Venezuela may be regarded as a 'legal person' under the Article 263 of TFEU. In this regard the court observed that there is no indication in the article that a certain category of legal person would not be able to avail the provision provided there. So, the court considered that the 4th paragraph of Article 263 TFEU should be read in light of principles of rule of law and judicial review. So, a third state should have a standing to bring up proceeding in the court of Justice as they are a legal person under the paragraph 4 of Article 263 of TFEU. As Venezuela as a state have international legal personality it should be regarded as a legal person within the meaning of Paragraph 4 of Article TFEU. The Court also notes that the regulation 2017/2063 is a 'regulatory act' which is within the meaning of 4th Paragraph Article 263 TFEU.

⁵² Council Regulation (EU) 2017/2063 of 13 November 2017 concerning restrictive measures in view of the situation in Venezuela (OJ 2017 L 295, p. 21).

⁵³ Judgment of 20 September 2019, *Venezuela v Council* (T-65/18, EU: T:2019:649).

The court then goes on the next matter where the general court held that the matter did not directly affect the legal situation of Venezuela but The Court of Justice held that the General Court made an error in law. It observed that the restrictive measure adopted against Venezuela prohibit EU operators to carry out transaction. These prohibitions prevented Venezuela from obtaining various goods and services. So, the court held that such measurement directly affects the legal situation in Venezuela.

Moreover, the Court concluded on 22 June,2021 that a third state dose indeed have a locus standi to bring proceeding against those articles without having to prove that the articles are of individual concern to them.

This decision was ground breaking as it opens up opportunity to third state to bring their dispute with EU to CJEU. It gives the states another place other than the ICJ to settle their dispute with the EU.

4.3 Judicial Issues Regarding Unilateral Economic Sanctions

On 5 August, 1955 the Treaty of Amity Economic Relations and Consular Rights was signed by Iran and US. But on 1979 the hostage crisis on the US embassy greatly impacted the relationship between the states because in response of the situation the government and law enforcement did not take any necessary steps to prevent that from happening. As Iran failed to protect the citizen of US in the embassy, US invoked the treaty under which both states were obligated to protect the citizen of the other state.⁵⁴ Such action also violated Articles 22 (2), 24,25,26,27 and 29 of the 1961 Vienna Convention on Diplomatic Relations, of Articles 5 and 36 of the 1963 Vienna Convention on Consular Relations In this case the judgement of the ICJ was held on 24 May 1980, it was in favor of US and Iran was ordered to release all diplomatic consular staff and US citizens unlawfully held in Iran and provide sufficient reparation.⁵⁵

United States imposed sanction against Iran on 7 August 2018. In response to such sanction, Iran filed an Application before ICJ on 16 July 2018 claiming that such sanction violates Article 20 under the Treaty of Amity, 1955. Iran argued that ICJ has jurisdiction over the case under Article 21 para 2 of the Amity treaty where it is stated that if any dispute between the High contracting party in not solved satisfactorily by diplomacy, then they shall submit it to the ICJ unless they agree to do otherwise. US argued that sanction imposed which is subject matter of this dispute is an application of Joint Comprehensive Plan of Action and has no connection with the Treaty of Amity 1955. The court rejected US argument of jurisdiction. In this case ICJ held that The United State shall remove any hinderance of free importation in Iran of medicine, medical equipment, food, agricultural commodities, spare parts and necessary services for the safety of the civil aviation.⁵⁶

⁵⁴ Treaty of Amity Economic Relations and Consular Rights (United States of America - Islamic Republic of Iran) 15 August 1955 art 2 <https://www.state.gov/documents/organization/275251.pdf>

⁵⁵ United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran) [1980] ICJ Rep 3 <https://www.icj-cij.org/public/files/case-related/64/6293.pdf>

⁵⁶ Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2021, p. 9

4.4 Conclusion

In cases of judicial issues most difficult matter is jurisdiction. ICJ cannot try a case unless it has jurisdiction over the case. ICJ can have jurisdiction over the cases where any provision of a treaty is violated and such treaty gives ICJ jurisdiction over the dispute. ICJ does not have any inherent jurisdiction. so in cases where no treaty is violated by an economic sanction ICJ has no jurisdiction over the case. CJEU has given a ground breaking judgement in this regard. CJEU has given third country locus standi to start a proceeding in the court if any provision of EU regulation affects the legal situation of the state.

Chapter 5

Conclusion

5.1 Overview

Economic sanction has become one of the most used foreign policy tool in recent times. Many developed and states with large economy use it to influence the decisions of other states. The use of economic sanctions by UN and EU has also increased a lot in recent decades. Economic sanction has become very frequent and common phenomenon in recent times.⁵⁷ It is also considered cheapest measure that can be taken against a state to control their international policies because it does not include any type of military action. Economic sanctions have a vague area as neither the UN Charter nor ICJ has properly identified any proper guideline relating to such sanction. UN Charter Chapter VII Article 41 does give provision relating to multilateral sanction but there is no such provision validating or prohibiting unilateral sanctions. ICJ has also ignored addressing this matter. The UNSC is supposed to determine the existence of any threat to world security and peace.⁵⁸ But there are no clear provisions regarding what procedure should the UNSC should use it order to determine such threat. There is also no guide line regarding what decree of measure the UNSC is supposed to take. According to the territorial principal each state is entitle to regulate conduct within its own territory. It's a basic principle of international law that domestic law is only territorial in nature.⁵⁹ But many state enact domestic laws to enforce economic sanction on other state. So unilateral sanction violates this principal as it gives extra-territorial effect of their domestic law which affect other states territory. In spite of it being conflicting with the international principal, its use is increasing which is very alarming. Such sanctions often fail to achieve their goal but the citizens of the targeted state still has to suffer. In 1967 Nigeria imposed sanction on Bafra which resulted in failure but still cost 15.2 GNP loss. In 1951 UK and US imposed sanction on Iran which was also a failure but still cost 14.3 GNP loss and UK and UN sanction on Rhodesia also ended in a failure while still costing 13.0 GNP loss.⁶⁰ when the suffering of the citizen and death of thousands of innocent people is taken into account the question still remains, was the sanction a successful one even at such cost.

⁵⁷ Delevic, Milica. "Economic Sanctions as a Foreign Policy Tool: The Case of Yugoslavia." *International Journal of Peace Studies* (1998) 3 (1): 183–208 http://www.gmu.edu/programs/icar/ijps/vol3_1/Delvic.htm Accessed January 15, 2023.

⁵⁸ UN Charter CHAPTER VII Article 39

⁵⁹ *North Atlantic Coast Fisheries, United Kingdom v. United States*, 11 R.I.A.A. 167, 180

⁶⁰ Robert A. Pape; 'Why Economic Sanctions Do Not Work' [1997]; 22 (2): 90–136 *International Security*. <https://doi.org/10.1162/isec.22.2.90> Accessed on November 25, 2022.

5.2 Recommendations

Use of economic sanction is increasing, to minimize its bad effect we need Ligulated rules to impose sanction. There should be some codified rules that a sender state must follow before imposing a sanction. ICJ or other international court need jurisdiction regarding economic sanction to settle dispute between states. ICJ should have jurisdiction to any dispute regarding economic sanction. Current provisions of UN charter are vague regarding application of multilateral sanction and silent regarding legality of unilateral sanction. We need to Make current provisions of UN charter clearer and more specific. We need international guideline on use of economic sanction. Internationally there should be guideline as to which type of measure is acceptable in which situation. We should increase use of specific sanction. So that sanctions be more targeted toward specific part of a sector instead of whole sector or a complete trade embargo. There should be a limitation on the use of unilateral sanction. Unilateral sanction is heavily criticized so use of it should be minimized.⁶¹ We must limit sanctions which result in violating human right or worsen the human right situation in the targeted state. Sanctions which impact on human right situation of the targeted states should be minimized. More research should be done in this field.

5.3 Conclusion

Economic sanction has its own pros and cons. The intended use of economic sanction under UN charter is to maintain world peace and security. It can be used as a great and effective measure to which can bypass armed conflicts between states. But in recent times many states are using it as part of their foreign policy and applying economic sanctions left and right. Economic sanction makes a huge impact on the economy and human right situation of the targeted states. The difference in overall human right value is about -1.413 in between no sanction and sanctioned situation.⁶² This kind of use of economic sanction is causing more harm than good. The norms regarding Multilateral sanction are that it is used by international organization like UN to maintain world peace and security. Unilateral sanction on the other hand has no regulating principals. States are using such sanctions as they please. States are using it as a normal foreign policy by it have a huge impact on the world economy as well as the economy of the both states.

⁶¹Dursun Peksen, 'Economic Sanctions and Human Security: The Public Health Impact of Economic Sanctions' (2011) 7(3) 237–251, Foreign Policy Analysis <https://doi.org/10.1111/j.1743-8594.2011.00136.x> Accessed on December 31,2022.

⁶²Jerg Gutmann, Matthias NeuenkirchFlorian NeumeierArmin Steinbach, 'Economic Sanctions and Human Rights: Quantifying the Legal Proportionality Principle' Research Papers in Economics No. 2/18 (University of Trier)

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