

The International Responsibility Caused by the Imposition and Implementation of Economic Sanctions

Mansour Farrokhi.¹

Hormozgan University

Abstract. The imposition and implementation of economic sanctions in many cases causes international responsibility. Although, it may seem at the first glance that only sanctioning States are liable to international responsibility, it may apply to sanctioned states too; Sanctioned states have some positive and negative obligations, the breach of which will result in their responsibility. The international responsibility caused by the imposition and implementation of economic sanctions mainly results from the breach of the international law of human rights and humanitarian law. In the present paper, both descriptive and analytic methods are used; the descriptive method is used for explaining the obligations regarded to sanctions and the analytic one is used for analyzing the basis and consequences of international responsibility caused by economic sanctions. The main aim of this paper is the clarification of the aspects of this responsibility and how to enforce it in the international level. There are judicial and non-judicial methods to enforce the responsibility arising from economic sanctions. In the present paper, first, the breach of international obligations in sanction regimes is considered and then the enforcement of international responsibility caused by economic sanctions will be discussed.

Keywords: economic sanctions, international responsibility, positive obligations, negative obligations, human rights.

1. Introduction

There is much documentation on the adverse consequences of comprehensive and unilateral economic sanctions. (1) In Iraq, for example, human and political costs of economic sanctions attracted the notice of political observers to some concern on human security. Human rights groups, from the Red Cross to Human Rights Watch, have criticized comprehensive sanctions morally. (2)

It should be noted that the international responsibility caused by economic sanctions is not confined to sanctioning entities, but it may apply to sanctioned states when they ignore their positive and negative obligations in this respect. The breach of human rights norms may occur in one of the two ways; first, by imposing comprehensive economic sanctions which are intrinsically in contradiction with human rights norms. The sanction regimes lacking any exemption clauses on essential goods and services are included in this category. The second position is that faults done during a sanction regime amount to international responsibility; the main faults which may occur include but not limited to the misuse of the bad conditions of the sanctioned country, refraining from exercising the exemption clauses provided in the sanction regime and the lack of supervision over the implementation of it.

In the present paper, first, the breach of international obligations in sanction regimes is considered and then the enforcement of international responsibility caused by economic sanctions will be discussed.

2. The Breach of International Obligations in the Economic Sanctions Regimes

1- Corresponding author: Mansour Farrokhi. Tel.: +987615557232; 09173680578; fax: +987615550269;
E-mail address: Farrokhi1389@yahoo.com

Whereas the basis of the responsibility of every subject of international law is the breach of an international obligation, first it is necessary to know that what obligations exist in relation to economic sanctions.

The UN Committee of Economic, Social and Cultural Rights has recognized two sets of the obligations. The Committee states in General Comment No.8 that:

“The first set relates to the affected State. The imposition of sanctions does not in any way nullify or diminish the relevant obligations of that State party. As in other comparable situations, those obligations assume greater practical importance in times of particular hardship. The Committee is thus called upon to scrutinize very carefully the extent to which the State concerned has taken steps “to the maximum of its available resources” to provide the greatest possible protection for the economic, social and cultural rights of each individual living within its jurisdiction. While sanctions will inevitably diminish the capacity of the affected State to fund or support some of the necessary measures, the State remains under an obligation to ensure the absence of discrimination in relation to the enjoyment of these rights, and to take all possible measures, including negotiations with other States and the international community, to reduce to a minimum the negative impact upon the rights of vulnerable groups within the society.”(3)

The emphasis of the committee on the fact that the obligations of States are not nullified or diminished as a result of the imposition of economic sanctions, indicates that the imposition of sanctions, in spite of some difficulties doesn't suspend the rights provided in human rights documents. The Committee in the same general Comments considers:

“The provisions of the Covenant, virtually all of which are also reflected in a range of other human rights treaties as well as the Universal Declaration of Human Rights, cannot be considered to be inoperative, or in any way inapplicable, solely because a decision has been taken that considerations of international peace and security warrant the imposition of sanctions.”(4)

The obligations of sanctioned States arise in two areas; the positive obligations and the negative ones. Positively, the sanctioned State is obliged to cooperate with other States and international organizations in the distribution of necessary goods which are exempted of the sanction. Another positive obligation is the duty to negotiate with other States and international community about the inclusion or exclusion of exemption clauses.

Negatively, the sanctioned State must refrain from disturbing the trend of the consignment and delivery of necessary goods and/or misusing of the existent conditions in the sanctioned country. “The final policy problem was the link between sanctions and the spread of corruption, as the UN's Oil for Food scandal made clear.” (5)

- ***First, these rights must be taken fully into account when designing an appropriate sanctions regime. Without endorsing any particular measures in this regard, the Committee notes proposals such as those calling for the creation of a United Nations mechanism for anticipating and tracking sanctions impacts, the elaboration of a more transparent set of agreed principles and procedures based on respect for human rights, the identification of a wider range of exempt goods and services, the authorization of agreed technical agencies to determine necessary exemptions, the creation of a better resourced set of sanctions committees, more precise targeting of the vulnerabilities of those whose behavior the international community wishes to change, and the introduction of greater overall flexibility.***
- ***Second, effective monitoring, which is always required under the terms of the Covenant, should be undertaken throughout the period that sanctions are in force. When an external party takes upon itself even partial responsibility for the situation within a country (whether under Chapter VII of the Charter or otherwise), it also unavoidably assumes a responsibility to do all within its power to protect the economic, social and cultural rights of the affected population.***
- ***Third, the external entity has an obligation “to take steps, individually and through international assistance and cooperation, especially economic and technical” in order to respond to any disproportionate suffering experienced by vulnerable groups within the targeted country. (6)***

As it can be seen, the above obligations are positive; however, there is a negative obligation for sanctioning entities in refraining from imposing comprehensive economic sanctions.

3. The Enforcement of International Responsibility Caused by the Imposition and Implementation of Economic Sanctions

In the case of human rights violations in a sanction regime by a sanctioning entity, the international responsibility of that entity will follow. Whereas human rights obligations are *erga omnes*, every State has the competence of action against the serious and systematic human rights violations by other States. (7)

The international practice shows that sometimes the national States of victims and sometimes other States have decided to enforce the responsibility, while in some cases we have witnessed the reaction of international organizations. (8)

However, international law in the field of individuals' rights for action against the breach of human rights norms in sanction regimes hasn't attained a considerable progress; individuals can only have an action against their national State. But those who are neither the citizens of the Violator State nor the settlers of that State haven't the right for action except through their national State and in terms of diplomatic protection. (9)

Whereas human rights violations as a result of the imposition and/or implementation of economic sanctions may affect either the people of the sanctioned State or third States, the responsibility for sanctions is a transnational responsibility. This fact necessitates the development of the safeguard methods of human rights. The evolution has been towards the formation of a right for affected people to act individually and directly against violator States. One of the mechanisms for exercising this right is bringing actions by individuals before regional courts.

Since affected people can't directly bring their actions before global tribunals such as the International Court of Justice (ICJ), the role of regional courts is very essential in considering individual complaints on human rights violations caused by economic sanctions including the breach of fundamental rights. In addition, a State can only bring an action against another State upon a jurisdictional basis and the consent of the Defendant State. Since States' consent to the jurisdiction of international courts in the field of economic sanctions is rare, regional courts such as the European Court of Justice which are open for individuals are good alternatives for administering justice in this respect.

4. Conclusion

The obligations relating to the imposition and implementation of economic sanctions aren't confined to sanctioning entities, but it applies to sanctioned States too. The breach of those obligations may result to the international responsibility of sanctioning entities. The obligations in this respect contain two sets of duties; first, the positive obligations and second, the negative ones. Positive obligations refer to the acts that the sanctioning entity, sanctioned State and even third parties have to do. In contrast, negative obligations refer to what must not be done by the concerned parties.

The ways to enforce the responsibility arising from economic sanctions aren't unique. There are judicial and non-judicial methods. Since the breach of international obligations regarding economic sanctions are mainly human rights violations, States are liable to transnational responsibility in this respect.

In addition to diplomatic protection by national States of affected people, the individuals' rights to bring an action before regional courts may ensure compensation.

5. References

- [1] Drezner, Daniel W. Sanctions Sometimes Smart: Targeted Sanctions in Theory and Practice. *International Studies Review* (2011) 13, p. 98.
- [2] Manchak, Benjamin. Comprehensive Economic Sanctions, the Right to Development and Constitutionally Impermissible Violations of International Law. *Boston College third World Law Journal* (2010), Vol.30. Issue 2, P.431.
- [3] Committee on Economic, Social and Cultural Rights, General Comment No.8 (1997). "The Relationship between Economic Sanctions and Respect for Economic, Social and Cultural Rights". para. E/C. 12/1997/8. para.10.

[4] Ibid, para.7.

[5] Drezner, Daniel. op.cit. p.98.

[6] Committee on Economic, Social and Cultural Rights, op.cit. Paras.12, 13, 14.

[7] Gil, Amparo Sanjose. State Responsibility for Human Rights Violations. Translated by Ibrahim Beigzadeh. (Persian). *Review of Legal Research* No. 29-30. Spring/Summer of 2000.p. 305.

[8] Ibid, pp. 305-306.

[9] Gibney, Mark et al. Transnational State Responsibility for Violations of Human Rights Law. *Harvard Human Rights Journal* / Vol. 12, Spring 1999. Available at www.harvard.edu.