

EXECUTIVE SUMMARY

“UNILATERAL AND SECONDARY SANCTIONS: AN INTERNATIONAL LAW PERSPECTIVE”

The imposition of unilateral and secondary sanctions on countries through application of national legislation is not-permissible under international law. The uses of collective economic coercion or multilateral sanctions against a particular state by the international community for committing an internationally wrongful act, have been addressed under Chapter VII of the Charter of the United Nations. Increasingly, it is witnessed in contemporary era that certain states impose unilateral sanctions against third party through application of national legislation. Such application is not only unjustifiable but also impermissible.

In recent years certain States have found themselves facing the specter of economic sanctions results imposed by another State generally because of contrasting political issues. It is strongly contended that States impose unilateral and secondary sanctions on target countries in order to change their political behavior. Also, the targets of such measures are invariably developing countries, and the resulting damage done by such economic measures is often catastrophic for the economic development of the State and the social and political wellbeing of its people.

The forthcoming study by the Secretariat of Asian-African Legal Consultative Organization (AALCO) on “Unilateral and Secondary Sanctions: An International Law Perspective” has been mandated by the Member States of AALCO at its Fifty-First Annual Session held in Abuja, Nigeria from 18 to 22 June 2012. The topic “Extraterritorial Application of National Legislation: Sanctions Imposed Against Third Parties” have been on AALCO’s work programme for nearly one and half decades. This topic holds significance for AALCO Member States as many of its members have been targets of unilateral sanctions in the recent past. The AALCO Secretariat has prepared this study specifically dealing with the legal, economic, and human rights implications of the extraterritorial application of national legislation by one State against another, as well as the imposition of secondary sanctions.

The Secretariat Study consists of five core issues which is chapterised in the following manner: (i) impermissibility of unilateral and secondary sanctions under international law; (ii) Impact of unilateral and secondary sanctions on financial institutions; (iii) Unilateral and Secondary Sanctions and International Trade law; (iv) Unilateral and secondary sanctions as human rights violations; and (v) Response of the international community to the imposition of Unilateral and secondary sanctions.

Impermissibility of Unilateral and Secondary Sanctions under International Law

Unilateral and Secondary coercive measures often refer to economic measures taken by one State to compel a change in policy of another State. The most widely used forms of economic pressure are trade sanctions in the form of embargoes and/or boycotts, and the interruption of financial and investment flows between sender and target countries. While embargoes are often understood as trade sanctions aimed at preventing exports to a target country, boycotts are measures seeking to refuse imports from a target country. However, frequently the combination of import and export restrictions is also referred to as a trade embargo.

The foundational principles that regulate and govern international relations are stated in Charter of the United Nations and the authoritative 1970 Declaration of Friendly relations and Cooperation among States. These include the principle of sovereign equality of states, principle of non-use of force, the principle of self-determination of people, the principle of non-intervention into the internal and external affairs States, the principle of peaceful settlement of international disputes, the principle of cooperation among states, and the principle of fulfilling in good faith obligations assumed under international law. The concept of unilateral sanctions violates certain core principles of the Charter of the United Nations, namely; principle of sovereign equality and territorial integrity, principle of non-intervention, and duty to cooperate.

Impact of Unilateral and Secondary Sanctions on Financial Institutions

Financial institutions are the strength of an economy. Increasingly, the role played by the central banks in developing countries has been wider. Besides performing the traditional functions, the central bank undertakes the responsibility of economic growth with financial stability in the economies. The central bank has a crucial function towards developing the banking and financial system of the country in order for ensuring well-organised money and capital markets within the economies. The chapter attempts to study the impact of unilateral and secondary sanctions on the financial institutions, especially the Central Bank of an economy, which is the backbone of regulating financial stability. The main contention is that since Central Bank has major role and function in regulating financial system of country, they should be granted immunity and their properties shall not be attached. The Central Banks being a state property would have serious implications on the economic transactions with third parties when subject to the imposition of unilateral and secondary sanctions.

Unilateral and Secondary Sanctions and International Trade law

The unilateral and extraterritorial application of national legislations against other countries or third parties leads to the disruption of the international trade system, which effaces the law and order situation of the international trading system. This situation

raises the question of legality of these unilateral and secondary sanctions in the context of the international law, trade law, principle of international humanitarian law and human rights law. The chapter attempts to elaborate the unilateral and secondary sanctions in the context of the international trade and international law. Primarily reference would be made to the historical background of Unilateral and Secondary Trade Sanctions imposed by US on different countries, especially AALCO Member States. It would also venture to evaluate compatibility of unilateral and secondary sanctions in the context of international trade law agreements and bilateral trade agreements and its impact on third countries which has trade relations with the target country.

Unilateral and Secondary Sanctions as Human Rights Violations

The effects of unilateral and secondary sanctions that are imposed by one state against another ultimately trickle down to the common person and affect him or her on a personal level. The most profound grassroots-level fallout from such sanctions results in the suffering of the common citizen in a targeted state and often results in large-scale violation of those people's human rights. This phenomenon is compounded by the fact that the targeted state is almost exclusively a developing country that is already facing financial and developmental challenges prior to the sanctioning. The additional burden of sanctions only increases the difficulty faced by these states. The list of recognized human rights that are adversely affected by sanctions is long and varied, but the discussion within the paper is limited to some of the more pertinent rights, particularly in view of the fact that the targeted states are developing and third-world states. The rights discussed will include: the right to self-determination; the right to development; and, the right to life, with particular attention paid to the right to food and the right to health and medicine. While a classification of the importance of rights is obviously not possible, these particular rights were chosen for their relevance to the developing world and because of the massive problems caused by their violation. The legal framework within which these rights have been given protection under International Law, as well as the very real outcomes of their violation in sanctioned states are both dealt with in the chapter.

Response of the International Community to the Imposition of Unilateral and secondary Sanctions

The topics of unilateral and secondary sanctions have seen a great deal of debate in various fora around the world. That it is a polarizing and controversial topic in various quarters of the world community is all-too-apparent. This chapter deals with the opinions voiced by some of the most respected and vocal international organizations, as well as their member states in the forum provided by the organization. Within this chapter, a brief history and background of each of the organizations is provided, which should provide insight into the relevance of the opinion of the organization as an entity. Following that, there is a discussion of the organizations' opinion of particular

sanctioning acts as well as the topic of unilateral sanctions in general, as expressed through resolutions passed and declarations made by the organizations. There is also discussion of some of the statements of various member states of these organizations, which provide insight into the opinions of the individual member states of the organizations. The organizations dealt with in this chapter include the United Nations General Assembly, the Asian-African Legal Consultative Organization, the Group of 77, and the Non-Aligned Movement.

Hence, the Secretariat Study contends that unilateral and secondary sanctions is against international rule of law and promotes self-interest, which is opposed to the idea of multilateral sanctions. Unilateral sanctions affect trade relations of the target country as well as its trading partners, affect the economic and banking system besides inflicting suffering and deprivation of basic human rights on innocent citizens of target countries. These sanctions disrupts international trade may lead to violation of human rights and collective punishment of human societies. It will also affect the fundamental rights of human societies not only the targeted states but also the third party and the entire international community. This application is prima facie extra-territorial in nature. The doctrine concerning extra-territorial application of national legislation though not well settled, the basic principle in international law is that all national legislations are territorial in character. State practice and doctrinal evolution in international law reflects that there is unanimous rejection to extraterritorial application of national legislation for the purpose of creating obligations for third States. The unilateral and extraterritorial application of national legislation violates the legal equality of States, and principles of respect for and dignity of national sovereignty and non-intervention in the internal affairs of the State.