"UNILATERAL SANCTIONS IN INTERNATIONAL LAW"

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AT
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Ms. Maya Lester, Barrister with Brick Court Chambers;

Mr. Nema Milaninia, Associate Legal Officer, International Criminal Tribunal for the former Yugoslavia (ICTY)

Distinguished Dignitaries, Ladies and Gentlemen;

It is an honour to be part of this Symposium on "Unilateral Sanctions and International Law: Views on Legitimacy and Consequences". Thank you for your warm welcome. I take this opportunity to thank the Organizing Committee for inviting me to deliver a speech on behalf of Asian-African legal Consultative organization (AALCO).

I am given the task of identifying unilateral sanctions in international law. *'Sanction'* as we all know, in international affairs means a penalty imposed against a nation to coerce it into compliance with international law or to compel an alteration in its policies in some other respect. Legitimacy of sanctions under international law is applicable only to 'multilateral sanctions' which are applied as per Chapter VII of the Charter of the United Nations. Historically, under the League of Nations system, the prerequisite for the use of economic and military sanctions[1] was that a member of the League of Nations had gone to war in violation of Articles XII, XIII, and XV of the Covenant of the League. Unlike the Charter, the Covenant of the League did not provide for binding decisions of the League's organs in this area. It was up to each member to decide whether or not to apply sanctions.

Ladies and Gentlemen;

Security Council is vested with the 'primary responsibility' for maintenance of international peace and security under the Charter of UN.[2] Towards that objective, the Security Council is enabled to take measures to impose economic sanctions apprehending threat or use of force or aggression against its member State[3]. Thus, multilateral sanctions were intended to be used as economic sanctions as part of a more sophisticated system of collective security particularly under the aegis of Security Council. Therefore, under international law, the Charter of the United Nations addresses *only* collective economic measure (or 'Multilateral Sanctions') through Article 41 which provides for including *inter alia* "complete or partial interruption of economic relations" in order to give effect to the Security Council decision with respect to maintaining or restoring international peace and security.

[1] Article XVI of the Covenant of the League
[2] Article 24 of the Charter of the United Nations
[3] Chapter VII, Article 39 of the Charter of the United Nations

Discussing about unilateral sanctions, it is usually imposed by an individual state based on the theory of retaliation. In rare cases, they may be implemented by international organizations or by a group of states through inter-governmental cooperation. These two latter types may be called "organized unilateral sanctions". Unilateral sanctions revolve around the role of powerful nations like the United States which has resorted to unilateral sanctions more than any other country as a primary tool of advancing its foreign policy.

Unilateral sanctions/coercive measures often refer to economic measures taken by one State to compel a change in policy of another State.[4] 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. Hence, its definition states that:

> "coercive economic measures taken against one or more countries to attempt to force a change in policies, or at least to demonstrate the sanctioning country's opinion of another's policies"

It has been argued that Unilateral sanctions lack consensus 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.

[4] See Andreas F. Lowenfeld (2002), *International Economic Law* (Oxford: Oxford University Press), p. 698.

Ladies and Gentlemen;

The question remains as to under which law are the unilateral sanctions imposed against target countries. It is surprising to note that the national legislation of the imposing country is applied against the target country. Barring certain exceptions, under international law, a state has jurisdiction only in its own territory (*Territoriality principle*). The jurisdiction could only be extended beyond national boundaries/territory where the following principles of jurisdiction are applied:

(i) nationality principle – under which a state may prescribe laws governing the conduct of its citizens irrespective of where they reside;

(ii) passive personality principle – is invoked to exercise the jurisdiction of the state of a victim over crimes committed outside the territory of that state;

(iii) the effect principle – the basis for some countries to extend the reach of their laws over activities affecting their interests; and

(iv) universal jurisdiction principle – invoked to prosecute the offences that is recognized by the international community as crimes such as piracy, war crimes etc..

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.

Within this structure of international law, it becomes evident that unilateral sanctions violates certain core principles of the Charter of the United Nations, like principle of sovereign equality and territorial integrity, principle of non-intervention, and duty to cooperate. It also violates the core principles of 1970 Friendly Relations Declaration. These include the principle of - sovereign equality of states, non-use of force, self-determination of people, non-intervention into the internal and external affairs States, peaceful settlement of international disputes, cooperation among states, and fulfilling in good faith obligations assumed under international law. The unilateral sanctions imposed against third parties by virtue of application of one's own national legislation extra-territorially also breach certain basic tenets of general principles of international law. These include, principle of self-determination, 'right to development'[5] of the citizens and individuals residing in the targeted territory, countermeasures and dispute settlement, freedom of trade and navigation.

The adverse impact of unilateral sanctions on basic human rights of the citizens of the target countries, like right to life, right to food, right to health and access to medicine, besides right to self-determination and right to development is manifest. The right to development has become a "universal and inalienable right and integral part of fundamental human rights." It is an "inalienable human rights by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social cultural and political development, in which all human rights and fundamental freedoms can be fully

[5] Declaration of Right to Development, 1986

realized. Further, a Resolution entitled "Human Rights and Unilateral Coercive Measures" adopted by the Human Rights Commission expressly lists restrictions on trade, blockade, embargoes and freezing of assets as coercive measure constituting human rights offenses. It is essential to empahsise that unilateral sanctions adversely affects the development both socially and economically of the citizens collectively as many of the economic relations with imposing State would be affected. If such sanctions are imposed for many decades, it should be regarded as collective punishment against the citizens of the country by virtue of depriving them of their right to development.

Ladies and Gentlemen;

Allow me to briefly narrate the function and role of AALCO, the Organization which I head as the Secretary-General. AALCO being a forum for Asian-African solidarity and cooperation in matters of common legal concerns have raised their unified voice since its inception in 1956 in various international for a like the UNGA, ILC, Sixth Committee and so on. AALCO deals in its Work Programme with various substantive issues, among which one of the agenda items is, **"Extraterritorial Application of National Legislation: Sanctions Imposed Against Third Parties".** This agenda was proposed by one of its member States at the Thirty-Sixth Annual Session of AALCO at Tehran in 1997.

AALCO Member States affirm that Unilateral Sanctions imposed against third parties are violative of the principles enshrined in the Charter of the United Nations and other principles that are recognized through soft laws like the right to development and Friendly Relations Declaration. Further, Extraterritorial application of national legislation on third parties is per se illegal.

Considering the importance of the subject and its implications on few member states of AALCO in the Annual Session held last year, the Secretariat of AALCO was mandated to undertake a special study on the "Impermissibility of Unilateral Sanctions and Extraterritorial Application of National Legislation on Third Parties". This Special Study comprehensively analyse the impermissibility of unilateral sanctions under international law, its impact on the effective functioning of financial institutions of the target country, its negative impact on trade relations and human rights of the innocent civilian population. The project also covers those international organizations which have undertaken this subject for deliberations. The Research project is in the final stages of completion and would be released in the present Annual Session in September 2013 at New Delhi.

Ladies and Gentlemen;

In summation, I would like to conclude that unilateral sanctions are impermissible under international law. I thank the Organizing Committee of this Symposium, The Hague Centre for Law and Arbitration, Doshibha University Graduate School of Global Studies and the T. M. C. Asser Instituut for giving me an opportunity to address this august gathering.

I thank you.