

Chapter 5

EXTRATERRITORIAL APPLICATION OF NATIONAL LEGISLATION AND INTERNATIONAL TRADE LAW: ECONOMIC SANCTIONS

5.1. Introduction

The very notion of unilateralism in international relations is in violation of the civilized norms of international relations, and could pose a threat to the very rubric of existing international society. Unilateral sanctions, too, by their very nature, neither reflect consensus nor connote consent, and their illegality is blatant when they are imposed on a secondary basis aimed at disrupting the economic relations of the target state. However, sanctions are being increasingly utilized as a tool of foreign policy risk management, apparently to address acute crises and to mitigate risk from long-term threats like terrorism and cyberattacks,¹ and are projected as, allegedly, valued for their “coercive and stigmatizing functions.”² Amongst the four different types of sanctions, *viz.*, UN-authorized sanctions, sanctions taken by international organizations, legitimate countermeasures (lawful autonomous sanctions), and unilateral coercive measures or sanctions,³ the last category is either unregulated or based on questionable legality,⁴ and is at risk of potential misuse, in particular, when directed against third parties. The unilateral enforcement of national

¹ Cohen, D. S. and Goldman, Z. K. ‘Like It or Not, Unilateral Sanctions Are Here to Stay’, *AJIL Unbound* 113, pp146-151, 2019.

² Hofer, A., ‘The Efficacy of Targeted Sanctions in Enforcing Compliance with International Law’, *AJIL Unbound* 113, 2019, pp. 163-168.

³ Apart from the aforementioned four categories, there are measures known in international law as “retorsions,” that is, measures of discourtesy or unfriendliness that fall short of violating a rule of international law and which are therefore lawful, see Chapter II.

⁴ Hovell, D., ‘Unfinished Business of International Law: The Questionable Legality of Autonomous Sanctions’, *AJIL Unbound* 113, 2019, pp. 140-145.

legislation is devoid of the vital element of consent that has been the basis of international law- whether customary or codified.⁵ One-sided, unilateral acts by way of enforcement of national legislation could disrupt the international order and create chaos if they were not checked and allowed to proliferate unabated.⁶ Against this backdrop, this Chapter seeks to delve into the legality and adverse impacts of mainly secondary sanctions in the context of the regime of international trade law.

Despite ardent attempts by the international community to regulate and liberalize trade among States, and the existence of multifarious institutionalized arrangements conceived to aid such attempts, it has been observed in the past few decades that certain States have played truant. Such States, through application of their domestic legislations, have imposed unilateral and secondary sanctions on certain States and their trading partners with an objective of modifying the targeted entity's behaviour. Such imposition of unilateral and secondary sanctions through application of national legislation, which is "prima facie extraterritorial in nature and against the established principles of jurisdiction under international law",⁷ has become, it appears, an important tool for the enforcement of foreign policy of such States. For example, Zimbabwe is still subject to sanctions that date back to the reign of former President Robert Mugabe. The EU sanctions consist of an arms embargo and targeted asset freezes and travel bans, while the US has imposed financial restrictions (under the

⁵ Statement of the Secretary-General of the Asian-African Legal Consultative Committee Mr. Tang Chengyuan made at the First Substantial Session, AALCC, Report of the Seminar on the Extra-Territorial Application of National Legislation: Sanctions Imposed Against Third Parties, held in Tehran, Islamic Republic of Iran in January 1998, 23.

⁶ *Ibid.*

⁷ Mohamad, R., "Unilateral Sanctions in International Law: A Quest for Legality", in Ali Z. Marossi and Marisa R. Bassett (eds.), *Economic Sanctions under International Law-Unilateralism, Multilateralism, Legitimacy, and Consequences*, Asser Press, Springer, The Hague, Netherlands, 2015, 71.