Chapter 6

CHALLENGING EXTRATERRITORIAL APPLICATION OF NATIONAL LEGISLATION: LEGAL WARFARE AGAINST UNILATERAL AND SECONDARY SANCTIONS

6.1. Introduction

As seen in previous chapters, extraterritorial application of national legislations may, in many circumstances, amount to breach of international obligations that the wrongdoing country owes to other States, which could bring about damage to juridical or natural persons as well. In fact, it may be said that however denominated and in whatsoever context viewed, unilateral and secondary sanctions have an adverse effect on the targeted countries and persons. The latter usually weigh miscellaneous strategies to legally challenge the implementation of such sanctions and tackle their illegality through legal means. These could include existing mechanisms at the international level in terms of quasi-legislation and dispute settlement, as well as legislation and litigation at the national level.

All this is because countries worldwide are legitimately sensitive about their sovereign rights and economic interests, especially when jeopardized by other countries' unilateral measures. Since the 80s, for instance, some legislations have been put in place with a view to protecting national trust-related interests and mainly vis-à-vis target States, initially occurring in the US, Mexico and Canada.[1] Now a wider number of countries are following this

[1] See, eg, the UK's Protection of Trading Interests Act 1980; The Protection of Trading Interests (US Re-export Control) Order 1982, SI 1982/885; The Protection of Trading Interests (US Cuban Assets Control Regulations) Order 1992, SI 1992/2449; See also Canada's Foreign Extraterritorial

path, taking measures that constitute acts of 'lawfare', a term better reflected in the Chinese term *falu zhan* (most directly translated as "legal warfare").[2] In our discussion, those means of lawfare are the focus of attention that are employed with the aim of legally challenging unilateral and secondary sanctions imposed by way of extraterritorial application of national legislation in contravention of a conundrum of international legal norms and principles.

Resorting to lawfare, in this context, permits the targeted States and entities to have recourse to certain remedies many of which have, in the past, proved to be successful. In the present study, such remedies are viewed from two distinct aspects in terms of their judicial or legislative nature. After taking a glimpse into Iran's efforts to challenge sanctions by joining the JCPOA and then through resort to ICJ as a measure to protect its rights vis-à-vis unilateral sanctions, an analysis is given of legislations put in place to counter extraterritorial application of national legislations specifically dubbed as "Blocking Rules" in particular by the People's Republic of China and "Blocking Statute" by the European Union.

6.2. From joining the JCPOA to resort to ICJ by the Islamic Republic of Iran

The United States has enacted hundreds of sanctions against the Islamic Republic of Iran throughout decades. These include unilateral sanctions against the country's energy sector, oil and gas industry, import and export of goods and services, trade in metals, shipping and many more[3]. Iran's nuclear activities being the main topic of

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Measures Act and Mexico's, Ley de Proteccio´n al Commercio y la Inversio´n de Normas Extranjeras que Contravengan el Derecho Internacional; cited in *Secondary Sanctions*, p. 81, at. 403.

[2] Kittrie, Orde F. *Lawfare: Law as a weapon of war*. Oxford University Press, 2016, p. 8.

[3] The main statutes containing sanctions against Iran include The Iran Sanctions Act of 1996, as amended (ISA), The Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 (CISADA), Iran Threat Reduction