

# Economic Sanctions under International Law

Ali Z. Marossi · Marisa R. Bassett  
Editors

# Economic Sanctions under International Law

Unilateralism, Multilateralism, Legitimacy,  
and Consequences



ASSER PRESS



Springer

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ISBN 978-94-6265-050-3      ISBN 978-94-6265-051-0 (eBook)  
DOI 10.1007/978-94-6265-051-0

Library of Congress Control Number: 2014957403

Published by T.M.C. ASSER PRESS, The Hague, The Netherlands [www.asserpress.nl](http://www.asserpress.nl)  
Produced and distributed for T.M.C. ASSER PRESS by Springer-Verlag Berlin Heidelberg

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Printed on acid-free paper

Springer Science+Business Media B.V. Dordrecht is part of Springer Science+Business Media  
([www.springer.com](http://www.springer.com))

# Preface

At the time of this volume's publication, further rounds of economic sanctions have been imposed against Russia in response to the situation in Ukraine. Economic sanctions against Iran have been heralded as a success for supposedly bringing the Iranian government to the nuclear roundtable. And the general appeal of economic sanctions has grown as major developed States are under domestic pressure to avoid military involvement in foreign disputes, while they remain under an expectation to prevent the spread of global conflicts.

While the resort to economic sanctions in addressing foreign policy disputes has increased over years, and particularly since the end of the Cold War, it is now universally accepted that the imposition of economic sanctions, be they uni- or multilateral, have broad-ranging and often unintended effects on the targeted State's civilian population. Equally, it is also without question that States do, and should, have the right to impose economic sanctions in circumstances where the targeted State is a threat to the sanctioning State's security or to international peace and security. The increased use of sanctions in lieu of military measures has, and can, ensure that more peaceful efforts are taken to resolve international disputes before resorting to military means. But due to the dichotomy of realities between the need to impose economic sanctions and their harmful effects, it becomes all the more necessary that more discussions and efforts are had to ensure that economic sanctions programs are restrained by a legal order that ensures they are humane in their implementation and effects.

The aim of this volume is to canvas the varying arguments and opinions pertaining to economic sanctions and their relationship to human rights and humanitarian law, economic development, international judicial institutions, and the accountability of States and regional and international organizations. This volume is, in part, a production of a symposium held at The Hague Center for Law and Arbitration at the Asser Institute in The Hague in July 2013 on the topic of unilateral sanctions and international law featuring distinguished speakers, panelists, and government representatives—including from States that have used or been the target of economic sanctions—from over 40 countries. While the viewpoints expressed about the effectiveness and legality of economic sanctions at that

conference were diverse, the underlying common belief was nonetheless that international law should continue to serve as a baseline by which all coercive actions, including the imposition of economic sanctions, should be regulated. It is to that aim that the editors of this compilation seek to address and for which the authors of this compilation have graciously contributed.<sup>1</sup>

The editors would like to thank the authors as well as the members of the Advisory Board—the Honorable Abdul G. Koroma, Djamchid Momtaz, Vera Gowlland-Debbas, Kamil E. Idris, Paul de Waart, Rahmat Mohamad, Daniel H. Joyner, Antonios Tzanakopoulos, Pierre-Emmanuel Dupont, Edward E. Russo, Kazem Gharibabadi, Mehdi Dehnavi-Khalaji, and most especially Nema Milaninia, without whom this volume would never have come to fruition. These individuals have provided invaluable perspective and guidance from the planning of the initial symposium through publication.

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<sup>1</sup> The points of view that the authors have expressed here are their own and are not necessarily those of any associated institutions or of the editors themselves.

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# Acronyms

BIT	Bilateral Investment Treaty
CESCR	Committee on Economic, Social and Cultural Rights
CFI	Court of First Instance
CRC	Convention on the Rights of the Child
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECOSOC	United Nations Economic and Social Council
ECOWAS	Economic Community of West African States
ECtHR	European Court of Human Rights
EEC	European Economic Community
EU	European Union
FCN	Friendship, Commerce and Navigation (type of treaty)
GATT	General Agreement on Tariffs and Trade
IAEA	International Atomic Energy Association
ICC	International Criminal Court or International Chamber of Commerce (depending on context)
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICSID	International Centre for Settlement of Investment Disputes
ICTY	International Criminal Tribunal for the former Yugoslavia
ILA	International Law Association
ILC	International Law Commission
IO	International Organization
IUSCT	Iran–United States Claims Tribunal
NAFTA	North American Free Trade Agreement
NPT	Non-Proliferation Treaty
OAS	Organization of American States
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights



PCA	Permanent Court of Arbitration
SCC	Stockholm Chamber of Commerce
SCSL	Special Court for Sierra Leone
TEU	Treaty of the European Union
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees (UN Refugee Agency)
UNSC	United Nations Security Council
WMD	Weapons of Mass Destruction
WTO	World Trade Organization

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# Foreword

Adapted from keynote address at Hague Centre for Law and Arbitration and Doshisha University Graduate School of Global Studies (Japan) symposium of the same name held at the T.M.C. Asser Institute, The Hague, The Netherlands, 11 July 2013.

The themes of this volume, unilateral sanctions and international law, are very important issues of contemporary international relations. These are very much live issues: they are not abstract, and they are certainly not esoteric. When sanctions are imposed, they are intended to have an impact; their purpose is coercive and sometimes punitive. Therefore, the issue of unilateral sanctions is not abstract, although as a concept it may be considered so.

It is my presumption that most readers of this volume believe that relations between States must be regulated and must be based on international law. Respect for international law or the principles of international law is the *sine qua non* for international relations.

Unilateral sanctions, on the other hand, involve, as implied, a measure of unilateralism as well as a measure of coercion. Accordingly, tension exists between the concepts of unilateral sanctions and international law. Are these two concepts reconcilable? Can the tension that exists between them be resolved?

Unilateral sanctions are coercive measures taken or imposed by one State to punish another State and can take various forms, such as reprisals, retorsion, private justice, self-help, use of force, and third-party justice. I am not suggesting that all these categories are one and the same, but there is, in my view, a common element among them. The common element present in all these different categories is that of coercion or demand for compliance and the act of unilateralism.

Unilateral sanctions, at first sight, might seem to challenge the principle of state sovereignty and that of the rule of law. Accordingly, unilateral sanctions could be considered as a challenge to the existing international legal order which is anchored in the UN Charter, according to which sanctions are to be imposed by the UNSC, following a determination that there is a threat to or a breach of international peace and security.

As opposed to the multilateral process of UNSC action, unilateral sanctions involve only one State making the determination that there has been a violation of international law or a breach of an international obligation.

The current international legal order provides for the sovereign equality of all States, the prohibition of threat or use of force by one State against another, and the peaceful settlement of disputes.

The purpose or justification for the imposition or prescription of unilateral sanctions varies. For some, unilateral sanctions are intended to implement rights and obligations: in other words, coercive measures are taken for rights to be observed and obligations undertaken respected. For others, sanctions are intended to rectify a deviant behavior or conduct. Unilateral sanctions have also been purportedly imposed as a reaction to an illegal act. However, the imposition of sanctions in response to an illegal act, by definition, presupposes a prior determination that the act in question was, indeed, illegal. Accordingly, for sanctions to be legal they must be in accordance with certain criteria under international law. It is therefore open to question whether the State imposing the sanction should be the one making the determination that there has been a breach of an international obligation or a violation of international law.

The reasons, purposes, or justifications of unilateral sanctions vary. It is in that context that we can see a potential danger that a State acting unilaterally, singly, may make an incorrect determination that there has been a violation by the target State of international law or an international obligation when no such violation or breach, objectively determined, had in fact taken place. There is also the danger of unilateral sanctions being imposed for reasons other than those publicly offered. In other words, a reason is offered that is meant to bring the target State in conformity with international law and its international obligations when, in fact, there is a different agenda.

Another factor that must be considered with respect to unilateral sanctions is the fact that the imposition of such sanctions may reflect *realpolitik*.

But even if unilateral sanctions can be considered legal, do such sanctions respect the sovereign equality of States? Do they protect the human rights of the civilians of the target States? Do such sanctions observe the right to socioeconomic development? Are all States capable of imposing unilateral sanctions for the alleged violation of international law? In this regard, if you consider Article 51 of the UN Charter, which allows for each State to act in self-defense when attacked or when force is used against it, it is obvious that not every State when attacked is capable of exercising the right of self-defense. So there is disequilibrium in international relations and even in what international law permits. It is, therefore, not for nothing that over the years the international community after much effort has vested the imposition of sanctions in the UNSC. After several decades, even centuries, the move has been away from unilateralism to some kind of centrality: decisions and action involving sanctions have to be taken in accordance with the UN Charter.

Hence, the concern that unilateral sanctions, even if justified, may not be in conformity with the various principles of international law, such as the ones that have already been mentioned, and namely, the sovereign equality of states, the prohibition of the threat or use of force, and the peaceful settlement of international disputes. Moreover, unilateral sanctions run the risk of violating other

principles of international law, the law of human rights, and international humanitarian law. Thus, imposing unilateral sanctions, while not illegal *per se*, runs the risk of violating principles of international law that are considered to be *jus cogens*. Unilateral sanctions are subjective: they are imposed by the State that has felt itself violated and that acts unilaterally to rectify what it considers to have been a breach.

For sanctions to be considered permissible, they should only be imposed for the violation of legal obligations and not as a tool of foreign policy. In other words, sanctions, when prescribed or imposed, must be in accordance with the principles of international law and the UN Charter.

Sanctions, including unilateral sanctions, cannot be imposed or prescribed in a manner that violates international law, including human rights law and *jus cogens* norms. If these conditions are not observed, unilateral sanctions themselves will be in violation of international law. They will be a negation, as it were, of international law.

It is most important to consider these two contemporary issues of great importance to the international community—unilateral sanctions and international law. This volume assembles the work of some of the best minds that, over the years, have written and considered these issues objectively and made considerable contributions in this area. The conclusions they reach enlighten us and will make an impact on our thinking on these important and timely topics.

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