

**"UNILATERAL SANCTIONS AND ACCOUNT
FREEZING: LEGALITY AND JUSTIFICATIONS
UNDER INTERNATIONAL LAW"**

Submitted By:

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I. ABSTRACT

The freezing of accounts by one country as an independent economic sanction is one of the most controversial actions and raises many questions, mainly about its legality under international law. The article examines whether such measures, when one country exercises them against another, amount to a breach of well-settled norms of international law. In regard to the legality of unilateral sanctions, the paper follows their compatibility mainly from the angle of the prohibition of the use of force and the principle of non-intervention. Background of such countermeasures Justification given for why the accounts had been frozen under international law. Using legal principles and precedents guiding the subject matter; the intention of this article is to define the legitimacy of the said actions and their wider ramifications on international relations. Conclusions drawn, therefore, are expected to contribute to the debate on striking a balance between state sovereignty and the enforcement of international norms.

II. INTRODUCTION

International law provides for International sanctions defined as penalties which are threatened or imposed as a consequence of non-compliance of International Standards or International Obligations by target state.¹ At international sphere, economic sanctions have become a regular

¹ Margaret P., Doxey, International Sanctions In Contemporary Perspective9(1996).

state practice to fulfil the political objectives of states. Economic sanctions are regarded as nonviolent form of coercion because they do not include military intervention. Nevertheless, traditional use of such sanctions has accompanied warfare.² For instance, when England boycotted English goods during 1767-1770, economic sanctions were imposed by British colonies in the USA against England.³ As a result, colonies shut down their markets to England as a response to the Townshend Acts which levied tax against the colonies. Eventually, the Act was replaced but tax on tea was retained. The tea tax was the reason behind Boston Tea Party of 1774 and was also predecessor to the American War for Independence. Late 20th century onwards, use of modern economic sanctions has increased as it is considered to be non-violent form of coercion and policy makers also desire to avoid conflict involving violence as much as possible.⁴ In modern era, economic sanctions can be defined as form of non-violent and coercive economic measures which are taken by one state (Sending State) against the other state (Target State) to coerce the latter to make changes in the practices and policies of latter.⁵ Economic Coercion if defined broadly include the use, threat to use, measures of economic character distinguished from military character to induce the target state to change policy, practice or governmental structure of target state. No consensus can be found in International Law regarding proper application of such coercive measures despite significant declarations, treaties and resolutions embraced in international organizations which attempt to establish norms to restrict the usage of such coercive measures.⁶ Economic Sanction have been imposed by various countries unilaterally such as US against India, Japan, Libya and others, by Japan against Myanmar, by European countries against Turkey et al.⁷ The aforesaid sanctions were imposed with an intention to bring about changes in the policies of each target state respectively and such sanctions have not been held to be unlawful under International Law.

Till 1990s, economic sanctions were imposed by United Nation Security Council (UNSC) twice but after this, council has played an active role in imposing sanctions on countries. These sanctions may be found in many forms such as unilateral sanctions, multilateral sanctions etc.

² Gary Clyde Hufbauer & Jeffrey J. Schott, *Economic Sanctions Reconsidered: History And Current Policy* 4 (1985).

³ George E. Shambaugh, *States, Firms, And Power: Successful Sanctions In United States Foreign Policy* 43.

⁴ Gary Clyde Hufbauer & Jeffrey J. Schott, *Economic Sanctions Reconsidered: History And Current Policy* 7 (1985).

⁵ Barry E. Carter, *International Economic Sanctions: Improving The Haphazard U.S. Legal Regime*, 75 Cal. L. Rev. 1162, 1169 (1987).

⁶ G.A. Res. 42/173, Annex, *Economic Measures As A Means Of Political And Economic Coercion Against Developing Countries* (Dec. 11, 1987).

⁷ Omer Y Elagab, *Coercive Economic Measures against Developing Countries* 41 Int'l & Comp. L.Q. 686 (1992).

Those sanctions which are imposed by one country over another country are known as Unilateral Sanctions. Those sanctions which are imposed by UNSC on the states in order to make them adhere with international law are Multilateral Sanctions. These sanctions are mandatory in the sense that all the members of the UN are bound to adhere by the order and to execute the sanctions against such state.⁸ Many Government plans fall under the broad spectrum of economic sanctions. Sometimes, it becomes difficult to distinguish between regular economic controls which is exercised by a state over its economy and other economic measures which are designed for the purpose of coercion against other states.⁹ This distinction is traced to the objectives of the sending state. Those measures which are backed by the objectives of furthering economy of sending state, they are not considered to be economic sanctions. On the other hand, if the objectives of the sending state behind imposing measures are not to take advantage for itself, the measures are considered to be of nature of economic sanctions.

In this article, we attempt to look at the legality of economic sanction. Various arguments are advanced by scholars in favour of economic sanctions by providing different justifications. The aim of the article is to reconcile the debates happening around the legality of unilateral sanctions and to see if such sanctions should be allowed in modern time.

III. RESEARCH QUESTIONS

1. Whether freezing of accounts of one state by another state, unilateral sanction, amount to violation of international law?
2. What are the possible justifications available in the international sphere for freezing of account of a state by another state?

Hypothesis- Unilateral sanctions by one country on another country are permitted in international sphere in some circumstances and are sometimes used as a tool to achieve political objectives.

Research Methodology- This project would follow doctrinal methodology which is descriptive in nature. Analytical research methodology will be followed by researchers in this project. Primary and secondary sources have been helpful in gathering relevant information

⁸ Miroslav Nincic & Peter Wallenstein, Economic Coercion and Foreign Policy, in DILEMMAS OF ECONOMIC COERCION 2.

⁹ Cf Andrd Beirlaen, Economic Coercion and Justifying Circumstances, 18 Revue beige de droit international 58, 68 (1984-85)

regarding project. Secondary sources like books and articles which are available online have been used. Along with this, e-databases like Jstor, Hein online have also been used by researchers. Footnotes have also been given to acknowledge wherever necessary.

IV. LEGALITY OF UNILATERAL SANCTIONS

The predominant view is that unilateral acts of states should be judged at a minimum by the standards required by the UN.¹⁰ United Nations declarations and resolutions represent a consensus of world expectation reflect the customary law and are universally-accepted principles. Extraneous sources¹¹ prohibit application of economic coercion against a member state to compel subordination of the State's sovereign right.¹² Economic Coercion if defined broadly include the use, threat to use, measures of economic character distinguished from military character to induce the target state to change policy, practice or governmental structure of target state.¹³ No consensus can be found in International Law regarding the proper application of such coercive measures despite significant declarations, treaties and resolutions embraced in international organizations which attempt to establish norms to restrict the usage of such coercive measures.¹⁴ Economic Sanction have been imposed by various countries unilaterally such as the US against India, Japan, Libya and others, by Japan against Myanmar, by European countries against Turkey et al.¹⁵ The aforesaid sanctions were imposed with an intention to bring about changes in the policies of each target state respectively and such sanctions have not been held to be unlawful under International Law. Economic sanctions may be imposed unilaterally, or by groups of States, in response to another State's human rights abuses.¹⁶ For example, the US and the EU have imposed economic sanctions on Myanmar in response to its appalling human rights record.¹⁶ Asset freezes may also enable the international community to inflict retribution upon target states for past human rights violations and deter

¹⁰ Jean-Pierre L. Fonteyne, *Forcible Self-Help By States To Protect Human Rights: Recent Views From The United Nations, In Humanitarian Intervention And The United Nations* 197 (1973).

¹¹ Charter of the Organization of American States, art 15, April 30, 1948, 2 U.S.T. 2394, T.I.A.S. No. 2361.

¹² Responsibility of States for Internationally Wrongful Acts, ¶52, 55[2001] UNYB 6, U.N.Doc. A/56/49; The Gabcikovo-Nagymaros Project (Hungary V Slovakia), Judgment, 1997 I.C.J. Reports 7, ¶85 (Sept. 25)(hereinafter 'Gabcikovo').

¹³ Barry E Carter, *Economic Coercion*, [MPEPIL] 2008.

¹⁴ G.A. Res. 42/173, annex, *Economic Measures as a Means of Political and Economic Coercion against Developing Countries* (Dec. 11, 1987).

¹⁵ Omer Y Elagab, *Coercive Economic Measures against Developing Countries* 41 *Int'l & Comp.L.Q.* 686 (1992)

¹⁶ Carlos Manuel Vázquez, 'Trade sanctions and human rights – past, present, and future', 6 *Journal of International Economic Law* (2003), p.79.

¹⁶ Michael Ewing-Chow, 'First do no harm: Trade sanctions and human rights' 5 *Northwestern Journal of International Human Rights*, (2007), 153.

future violations. There are a few principles which justify or legalize the unilateral economic coercion by one state on another. These principles have been explained as following:

USE OF FORCE

While multilateral measures are explicitly provided for by the U.N. Charter, the Charter does not prohibit unilateral measures to advance its purposes. While Article 2(4) of the U.N. Charter prohibits unilateral measures involving the use of force, the Charter does not expressly prohibit unilateral non-military actions such as economic sanctions by U.N. members.¹⁷ The UN Charter prohibits all members of the UN to resort to threat or use of force in their International Relations against the Political independence or Territorial Integrity of any other state. The Travaux preparatoires of UN Charter lays down that the prohibition imposed on the threat or the use of force is directed only to military force¹⁹ which is supported by the provision of the charter and the preamble. Moreover, states have also rejected the proposal to include economic force under the scope of “Use of Force”, as they would be left with no means of exerting pressure.

PRINCIPLE OF NON-INTERVENTION

The Principle of non-intervention has been recognized as CIL.¹⁸ Various legal instruments¹⁹ prohibit intervention in economic, political or any other form, directly or indirectly manifested. Formulation of legal policy falls within the ambit of domainereserv’e’. Economic conduct is intervention if an economic policy is adopted to coerce target state to take a course of action that the coercing state desires.²⁰ Freezing foreign assets amount to dictatorial control and ‘humanitarian intervention’ in the domainereserv’e’ and undermine the target state’s political independence. The principle of non-intervention involves the right of every sovereign state to conduct its affairs without external interference.²³ On December 21, 1965, in resolution, 2131,

¹⁷ Sarah H. Cleveland, “Norm Internalization and U.S. Economic Sanctions,” 26 Yale J. Int’l L. 1 (2001), p.51.

¹⁹Bruno Simma, *The Charter of the United Nations: A Commentary* 118 (Oxford University Press. 2002).

¹⁸ IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 447 (8th ed. 2012).

¹⁹ G.A. Res. 26/25, annex, Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (Oct. 24,1970);G.A. Res. 21/31, annex, Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty (Dec. 21,1965); G.A. Res. 36/103, annex, Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States (Dec. 9,1981); G.A. Res. 12/36, annex, Peaceful and neighborly relations among States (Dec. 14,1957); Military and Paramilitary Activities in and against Nicaragua (Nicaragua v.U.S.), Merits, 1986 I.C.J. Rep 14, ¶ 205 (June 27).

²⁰ A. THOMAS & A.J. THOMAS, *NON-INTERVENTION: THE LAW AND ITS IMPORT IN AMERICAS* 409 (1956). ²³ R. Y. Jennings and A. D. Watts, *Oppenheim’s International Law* 428 (9th ed. 2008).

the General Assembly adopted a Declaration on the inadmissibility of intervention in the domestic affairs of the state and the protection of their independence and sovereignty. It asserted that “no state has the right to intervene directly or indirectly for any reason whatever in the internal or external affairs of any other state”. The General Assembly reiterated the principle of non-intervention in its Declaration on the Principle of International Law on Friendly Relations and Cooperation among States. “Act directed against the personality of State or against political, economic and cultural elements, declared to be violation of International Law”.²¹ Intervention becomes wrongful when it uses methods of coercion in regard to such choices, which must be free ones. Humanitarian asset freezes require special legal justification because they represent a form of ‘dictatorial interference’ that violates general principles of international legal order.²² However, Professor Lori Fisler Damrosch has observed²³ that such non-forcible interference such as asset freeze arguably transgresses customary principles of external self-determination and non-intervention that are embedded in the UN Charter.

Customary International Law acknowledges that states have a duty not to intervene in the internal and external affairs of other states.²⁴ In the Case concerning- Nicaragua, this court delineated that an unlawful intervention must involve the element of coercion. A coercive intervention can only occur if it affects a matter which comes within the state’s domain reserve. The question of statehood comes within the purview of international law and not within the state’s domain reserve. The principle of non-intervention involves the right of every sovereign state to conduct its affairs without external interference.²⁵ This principle reflects its status as a corollary of every state’s right to sovereignty, territorial integrity and political independence.²⁶ The Friendly Relations Declaration delineates the requirement of coercion for intervention. Coercion under inter-state relations involves the government of one state compelling the Government of another state to think or act in a certain way by applying various kinds of

²¹ G.A Res. 2625 (XXV), Oct 24, 1970.

²² S. Murphy, *Humanitarian Intervention: The United Nations in an Evolving World Order* (1996), University of Pennsylvania Press, Volume 21, p.10.

²³ Damrosch, ‘Politics Across Borders: Nonintervention and Nonforcible Influence over Domestic Affairs’, 83 *AJIL* (1989) 1, pp. 6–13.

²⁴ IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 447 (8th ed. 2012).

²⁵ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. U.S.)*, Merits, 1986 I.C.J. Rep 14, 202 (June 27) [hereinafter ‘Nicaragua’]; Katja S Ziegler, *Domaine Réservé*, [MPEPIL] (2013). UNGA Res 2131 [XX], Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty, (Dec.21 1965); GA Res. 3281 (XXIX), UN. Doc. A/RES/29/3281, Economic Rights and Duties of States (12 Dec. 1974).

²⁶ Maziar Jamnejad & Michael Wood, *The Principle of Non Intervention* 22(2) *Leiden J Int'l L.* 345, 350(2009).

pressure, threats and intimidation or use of force.²⁷ Recognizing or denying statehood is within the domain reserve of a State.²⁸ The principle of non-intervention prohibits states from coercively influencing the internal affairs of another state. In order to qualify as violation of principle of non-intervention, sanction must (1) Constitute coercive interference (2) It should be in domain reserve'. An act is considered coercive if it undermines sovereign will amounting to dictatorial interference²⁹ and if the target state is forced to adopt a decision with regard to its policy or practice. Criteria such as intensity of the measures taken, the result actually reached, and the relationship between the means and the object must be considered to determine prohibited economic interventions.

V. COUNTERMEASURES

Under customary international law³⁰, countermeasures must be “preceded by a demand by the state that the responsible State complies with its obligations” and “an offer to negotiate”.³¹ Non-forcible countermeasures are only permissible when taken in response to an internationally wrongful act and only against the State responsible for that act. In case of urgent countermeasures, procedural requirements need not be fulfilled.³² The counter measures must be commensurate with the injury suffered, the gravity of the internationally wrongful act and the rights in question'. They must be “directed against” the violating state and “equivalent with the alleged breach,”³³ and must be temporary and reversible. Proportionality is concerned with the relationship between the internationally wrongful act and the countermeasure.³⁴ The measure should be “necessary and reasonably connected” with the purpose of countermeasures³⁵ and should be sufficient to induce the responsible state to comply with its

²⁷ Christopher C Joyner, Coercion, [MPEPIL] (2006); Shaw, *supra* note 12, at 647. Case Concerning Armed Activities On The Territory Of The Congo (Democratic Republic Of The Congo v. Uganda), Judgments, 2005 I.C.J. Rep.168. (Dec. 19); [hereinafter ‘Armed Activities’].

²⁸ Oppenheim, *supra* note 26, at 133;Lauterpacht, *Recognition of States in International Law* 53 Yale L.J. 320, 385 (1947); Nicaragua Case, *supra* note 144, at (June 27).

²⁹ HERSCH LAUTERPACHT, INTERNATIONAL LAW AND HUMAN RIGHTS 167 (1950).

³⁰ Rainbow Warrior Affair (New Zealand v France), U.N.R.I.A.A.217, Award, (Perm. Ct. Arb.1990).

³¹ Responsibility of States for Internationally Wrongful Acts, [2001] UNYB 6, U.N. Doc. A/56/49. The Gabcikovo-Nagymaros Project (Hungary v. Slovakia), Judgment,1997 I.C.J. Rep. 7, (Sept. 25)

³² G.A. Res. 56/83, annex, Responsibility of States for internationally wrongful acts (Dec. 12, 2001); G.A. Res. 66/10, annex, Articles on the Responsibility of International Organizations, (Dec. 9, 2011)

³³ Air Service Agreement of 27 March 1946 (the United States of America V France), 18 R.I.A.A. 417, 83(Perm. Ct. Arb. 1978)

³⁴ Int'l Law Comm'n, Rep. on the Work of Its thirty-first Session, U.N. Doc. A/34/10 at 135(1979)

³⁵ Archer Daniels Midland Company and Tate & Lyle Ingredients Americas, Inc. v. the United Mexican States, ICSID, Case No. ARB (AF)/04/05, Judgment, (Nov. 21, 2007); Materials on the responsibility of states for internationally wrongful Acts, [2012] U. N. L.S. 326, ST/LEG/SER B/25

obligations, without having a punitive effect.³⁶ The position of other States which may be affected may also be taken into consideration. An injured State may only take countermeasures against a State which is responsible for an internationally wrongful act in order to induce the latter to comply with its international obligations³⁷ which do not involve the use of force.³⁸ Under customary international law, countermeasures must be preceded by a demand by the State that the responsible State complies with its obligations and —an offer to negotiate. States must notify the violating State of their intent to pursue countermeasures, though this requirement is flexible when a state must act urgently to prevent injury. Freezing order will not tantamount to any effective action if elaborate procedures are to be followed. Freezing orders are reversible in its effects, does not infringe basic human rights, and its precise impact is readily quantifiable.³⁹ Proportionality is concerned with the relationship between the internationally wrongful act and the countermeasur⁴⁰. Countermeasures must be commensurate with the injury suffered, taking into account the gravity of the internationally wrongful act and the rights in question. They must be —directed against the violating state and —equivalent with the alleged breach, and must be temporary and reversible.⁴¹ Proportionality test requires not only losses suffered by parties but also the importance of principle arising out of such violation. In *Naulilaa Case*⁴² the Tribunal laid down an important condition of legitimacy of reprisals that reprisal must be preceded by an unsuccessful demand of redress. In fact, the necessity of resorting to force is justified if the possibility of obtaining redress by other means fails. There must first be an attempt to resolve or address the illegal act by other than resort to force. Even the same thing is observed in the *Air Service Agreement Arbitration*.⁴³ The first requirement is that the injured State must call on the responsible State to fulfil its obligations of cessation and reparation before any resort to countermeasures. This requirement

³⁶ Materials on the responsibility of states for internationally wrongful Acts, [2012] U. N. L.S. 326, ST/LEG/SER B/25

³⁷ James Crawford, *The International law commission's articles on State Responsibility: Introduction, text and Commentaries*, 168 (Cambridge University Press.2002)

³⁸ *Responsibility of States for Internationally Wrongful Acts*, [2001] UNYB 6, U.N.Doc. A/56/49

³⁹ James Crawford, *Counter-Measures as Interim Measures*, *Eur. J. Int'l L.* 65, 76, 79 (1994)

⁴⁰ *Int'l Law Comm'n, Rep. on the Work of Its thirty-first Session*, U.N. Doc. A/34/10 at 135(1979).

⁴¹ *Rainbow Warrior Affair (New Zealand V. France)*, U.N.R.I.A.A. 217, Award, (Perm. Ct. Arb.1990).

⁴² *Portugal v. Germany (1928) 2 R.I.A.A.*, p.1012, p.1019.

⁴³ *Arbitral Award of 9 December 1978 in the case concerning the Air Service Agreement of 27 March 1946 between the United States of America and France*, United Nations, *Reports of International Arbitral Awards (R.I.A.A)*, Vol. XVIII.

(sometimes referred to as “sommation”) was stressed both by the tribunal in the Air Service Agreement arbitration and by ICJ in the Gabčíkovo-Nagymaros Project case. It also appears to reflect a general practice.

VI. CONCLUSION

Economic sanctions, which are interchangeably used with economic coercion, are those measures which are imposed by one state or United Nation Security Council on other states. Former are generally backed by political motives of sender states. Recently, various states have imposed economic sanctions on other states in some or the other forms so as to coerce the target state to changes their policies at international level. The sanctions imposed by UNSC have certain caveats which must be fulfilled before imposing these measures yet Unilateral Sanctions don't seem to be bound by any such regulations. The legality of Unilateral Sanction has been a centre around which many controversies and debates have taken place. In international law, there are a few justifying circumstances for the imposition of Unilateral Sanctions such as Countermeasures, Reprisals et al. Some argue that the imposition of such sanction is not legal as it violates principle of non-intervention and the principle of use of force enshrined under UN Charter. It also violates the conventions and treaties signed and ratified by parties and which have become a part of Customary International Law. On the other hand, those who argue in the favour of the legality of unilateral sanctions are of the view that such sanctions are not in contravention of international law. Some states advance the argument that unilateral sanctions are countermeasures in nature and fulfil all the requirements of countermeasures. It becomes incumbent upon courts to see the requirements of countermeasures and to decide whether a particular imposition of unilateral sanction falls within the ambit of countermeasure or not. Moreover, recent states practice has given rise to the new norm of international law which permits imposition of economic measures including freezing of accounts by one state on the other state. Another point which is notable is that while deciding the legality of measures imposed, court must also look into the nature of such measures and objectives behind such imposition. Economic sanctions which are not backed by politics of sender states and are not of coercive nature must be distinguished from other economic sanctions which are coercive in nature. State practice with regard to economic sanctions is so prevalent and wide that it has become part of customary international law. Argument pertaining to use of force is not accepted on the ground that it does not involve economic use of force and during 1948, it was agreed by member states that economic use of force will not be covered under Article 51 of UN Charter

but time has changed. In order to curtail the arbitrary imposition of economic sanctions, it has become need of the hour to include economic use of force under Article 51 of UN Charter so that all those states which are targeted by sender states can be saved from such coercion and powerful states are not able to suppress the target states through such measures.