SANCTIONS IN INTERNATIONAL LAW: MORALITY AND LEGALITY AT WAR

Written By ***Dr. Chukwudi Victor Odoeme* & Dr. Collins O. Chijioke*****

** Senior Law Lecturer, Gregory University Uturu, Abia State Nigeria*

*** Associate Professor of Law and Head of Private and Property Law, Faculty of Law, Abia State University, Umuahia*

ABSTRACT

This article explores the interplay between morality and legality in the sanctions regime of public international law. It argues that although sanctions are choice international law instrument of action in response to human rights violation and situations considered detrimental to international peace and security, its effectiveness has been compromised by the contestation between morality and legality in the administration of sanction to the extent that sanctions have become mired in controversy. It identified the contestations as arising from the absence of uniformity in mankind's perception of morality, influence of national interest in sanction administration, unilateral imposition and enforcement of sanctions, absurdity in sanctions administration, derivation of profit from sanction administration, the use of veto powers, and application of self-help. It concluded that sanctions must be positioned as appropriate collective responses to norm violation. And to retain its usefulness, authority to administer sanctions must be centralization and remain the exclusive prerogative of the UN, and not volunteers. In spite of the controversy around the administration of sanctions, sanctions are still preferable to doing nothing in the face of massive human rights abuses and many other threats to international peace and security.

Keywords: National Interest, Sanction, Sanction Administration, Public International Law, National Interest, International Morality

INTRODUCTION

Morality and Legality have worked together to emplace and sustain international law and relations as well as the sanction regime that compels states to conform or punish states for

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breach. However, recent developments in the application of sanction as an instrument of international Law have put morality and legality at war such that sanction has become a controversial subject of public international law.

At the very early stages of formation of social groupings, rules were made in the best interest of states, and compliance with set rules were entirely voluntary as a sign of good etiquette and behaviour (morality). The application of sanctions to enforce the rules only became necessary when breaches of the rules became commonplace, or when it is perceived that breaches may have adverse effect if allowed to occur. In that case, it was expedient to identify sanctions and means of enforcement ahead of possible breaches (legality).

In the case of the international community as a social grouping, the need to avoid unnecessary friction and antagonism between states, disadvantaging/prejudicing other states national interests and the consequences of retaliation was the rationale for rules making, identification and enforcement of sanctions. That became the responsibility of international law as defined by international organizations' mandates, treaties, conventions, agreements, customs and national laws. However, avoidance of friction and antagonism; show of good etiquette and behaviour; and the perception that rules of international law are in the best interest of states was never enough to induce and sustain states' compliance with international law as was evident in the events leading to the formation of the United Nations. Consequently, international law developed a set of primary rules with foundation on morality, to regulate the conduct of states inter se, as well as secondary rules (law) to regulate the enforcement of the primary rules to avoid breaches and ensure compliance with the rules of civilized international community.

Primary rules have dominated literature on sanctions with respect to international law. Whereas secondary rules appear to have received lesser attention even though it is the bone of contention (controversial) in analytical texts on sanction regime. However, sanction, as an offshoot of secondary rules, do not often posse a difficult challenge where the United Nations (UN) (or other international organizations) is the sanctioning authority as they are often imposed pursuant to the UN Charter or international declarations relating to human rights. However, difficulties arise where a single state (or a single state acting in concert with her allies) is the

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sanctioning authority as such sanctions reflect more of pursuit of national interest than the general principles of international law.

Since sanctions that have the UN (or other international organizations) as the sanctioning authority are less controversial and less frequent, this work will therefore focus more on sanctions that have a single state (or a single state acting in concert with her allies) as the sanctioning authority because they are more controversial, more frequent and demonstrate the perceived "war" between morality and legality in the enforcement of sanctions. Consequently, this work will explore the "war" the contestation between morality and legality in sanction administration through insights into the nature of sanctions, morality in sanction regimes, sanctions as Foreign Policy Tool, as well as by untangling the knot for successful use of sanctions.

NATURE OF SANCTIONS

Sanctions weep erring target state(s) into conformity with international law.[i] They punish acts of threats to peace or proscribe escalation of same by a states' activity(ies). Sanctions are used to condemn specific action or state policy deemed anti human rights; or to damage the reputation of a state or leader (shaming) that violates international law norms.[ii]Sanctions may also be imposed on specific individuals that occupy or play significant roles in respect of action(s) deemed to be in contravention of international law.

Sanctions are often in the form of diplomatic, economic, sporting, targeted individual leaders, shaming leaders. Armed military intervention or use of force is usually at the outer limits of sanctions regimes.

In the application of diplomatic sanctions (temporary suspension of diplomatic relations), the sanctioning authority cancels or limits high level government visits to and fro the target state. Under extreme circumstances, the sanctioning authority could completely withdraw its Ambassador, Diplomatic Staffs and suspend diplomatic mission or activities with target state.

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Where the sanction is economic in nature, the sanctioning authority imposes import duties on certain goods, review existing import duties upwards, or suspend export and import activities involving target state.[iii] It may however involve restrictions on loan, credit, freezing of assets of certain peoples and or companies i.e. suspension of trade and financial relations.[iv]

When sanctions relate to sporting activities, the intent is usually to crush (psychologically) the morale of the sports loving population of a target state by preventing them from participating in international sporting activities. The idea is to prompt citizens of a target state to put pressure on their governments to conform to international law or reform.[v]
Sanction may however be targeted at individual leaders occupying or playing significant roles in the governance of a target state. This is usually by way of assets freezing, visa restriction, travel ban, and shaming.

Sanction may be by way of shaming individual leaders or significant others that are complicit in the violations of international law norms**.** Shaming (or alternative sanctions[vi]) takes the form of withholding of esteem, shunning, expulsion from group membership, or negative voting by other states in international organizations, and resolutions by political groups in domestic legislatures.[vii] Shaming is a deliberate attempt to negatively damage a state and or its leader's reputation by publicizing their involvements in the violations of international law norms,[viii] and labelling them as offenders or bad actors. This label encourages members of the international community to expel such a target state from international organizations as a pariah state; or shun the target state in commercial activities, sports, cultural and diplomatic relations. It may also mobilize domestic public opinion against the offending state or leadership forcing compliance with international law.

Shaming as an effective sanction (social sanction) derives its effectiveness from the fact that a state's reputation is considered national assets that gains currency in international affairs over time. Consequently, states are keen on protecting their reputation as much as they do for their territory.[ix] Reputation is so important to states such that they go extra miles to protect it,[x] as disclosure of dangerous activities might attract adverse consequences against the state as was the case with the disclosure of the grave abuses inflicted on Iraqi prisoners by the US Soldiers at Abu Ghraib.[xi]

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Where sanctions are Military in nature, they have involved targeted military strikes aimed at degrading a state's weapons capabilities, arms embargo such as ban on weapons, protective attire, military vehicles, and military assistance; aimed at cutting off supply of weapons to an affected state. It is often the last option in the line of sanction considerations.

By design, sanctions in international law help compel target states to comply with international law. In this case the international community express their desire to weep the erring state into conformity with international law.[xii] Sanctions are also used to contain threat to peace by proscribing the possibility of threat to peace or escalation of same by the states' activities;[xiii] condemn specific action or state policy deemed anti human rights.[xiv]

MORALITY IN SANCTION REGIMES

Morality was the bastion of the international community relations at the earliest stages of social grouping. Then came rules; many of which have their roots in morality) when the international community social group had taken shape. Morality still plays significant roles in the enforcement of the rules of the international community. It was morality that helped distinguish the international community's dismal responses to Josef Stalin's 1930 killing of twenty million Jews from her responses to Apartheid in South Africa and Rhodesia, Mass Rape in the war in former Yugoslavia, Genocide in Rwanda, carnage in Charles Taylor Liberia, as well as her recent apathy to the events in war-torn Syria. Today, morality has compelled many governments to care about how other governments treat their citizens within their national borders as much as such governments care about what other governments perceive of their treatment of their citizens and human rights situations; at least when violated) in their states. Consequently, international morality; mobilized by public opinion, accentuated by social and conventional media; compel interference in the internal affairs of states engaged in massive human rights violations, as well as other perceived infringements of rules of international law.

The fundamental objective of "sanctions in interstate relations is to make it expensive for a target state to refrain from doing what the sanctioning state wants it to do."[xv] This raises the question; whose morality supports such sanctions? Does morality in this conferred entails states with strong democratic institutions, states with most television sets,[xvi] super powers and or

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states with veto power at the UN, states whose national interest is more at stake, or neighbouring states) prompts the international community (or a single state) to apply sanctions to erring states. Whose morality dictates where, why, who, the application of sanctions in response to breaches of international law or to forestall same.

While moral and legal considerations make well designed sanctions efficacious in today's world;[xvii] the interplay of morality and legality in sanction administration make sanction a very controversial subject of public international law to the point of contemplation that both morality and legality may be at war with each other to the detriment of the sanction regime they promote.

In the evaluation of the sanctions "lawfully" administered on target states, it would be seen that most of recent sanctions entailed some measure of the use of "force"[xviii] with armed intervention (war) lurking at the corner.[xix]Sanctions had involved a considerable level of the application of punitive measures to compel a target state to do or refrain from doing an act deemed "unlawful" by the sanctioning authority. Some instances within the expanded scope of use of force have included threats of use of force, internal mobilization of troops without an identified target, recall of sanctioning authority's Ambassador to target state, eviction of target states diplomatic representatives from the sanctioning authority's state, securing of UN Resolutions against target state, publicity campaign against target state, enactment of legislation or proclamation aimed at the target state, show of force (by moving airplanes or ships around), engagement in provocative military exercises, call up of special forces, embargo on shipment of goods to target state, freeze or confiscation of target states assets and bank deposits, stoning or raiding of target states embassies, reconnaissance probing operations and military aircrafts over flights over target states territory.[xx]Or generally doing things a target state may find unpleasant or painful.

The punitive nature of these sanction models; particularly those applied by a single state unilaterally (and without the UN approval) amount to use of force which is prohibited by the UN Charter. Worse are circumstances where the punitive sanction measures yielded economic or monetary advantage to the sanctioning authority. These question the morality and legality of such sanctions; and have on some occasions led to rebellion and consequential collaboration of both target state and sympathizers, allies, or states that do not appreciate the guts of the sanction authority.[xxi]

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Morality and legality appear to be at war in the evaluation of the desirability of the action demanded of the target state by the sanctioning authority. The Cuban Missile Crises and the Cold War present good examples of war between morality and legality in the administration of sanction. They question the desirability and legality of the actions demanded of target states by the sanctioning authority as much as they question the morality behind them, if any. The 16th October to 20th November 1962 military and political standoff between the US and USSR due to the installation of nuclear missiles by the USSR in Cuba led to the US imposition of sanction tagged "quarantine" on Cuba. The sanction during "the Cuban Missile Crises" was an attempt to punish the Fidel Castro's Administration for her closeness with the communist USSR and Cuba's bringing of Communism very close to the heart of Capitalism - which provided USSR a base 90 miles from the US coastline -right in the US backyard. In this case, the US had subverted Cuba's sovereignty by attempting to coerce Cuba into behaving in a manner detected by the US. While the US response may be morally expedient, it offended international law.

Furthermore, the US had no legal right to either stop USSR from installing Nuclear weapons in Cuba or stop or dictate for Cuba its choice of diplomatic relations. Besides, the US did install similar weapons in Turkey and Italy aimed against the USSR. Yet, the US had imposed sanction against Cuba to compel Cuba to act in favour of the US. Whereas the US approach may be morally right, it was legally wrong as this diplomatic inducement curling state behaviour was neither aided by any violation nor attempt to violate international law.

Similarly, instead of retaliation or getting the UN to deal, the US chose to unilaterally freeze Iranian deposits in banks that it had influence and or control over in America and Europe to compel the Iranian government to release the 50 US diplomatic personnel it held hostage in Tehran in 1978. Whereas this sanction compelled Iran to conform to international law by unconditionally releasing the said American diplomatic personnel, its trust puts morality and legality at daggers drawn. The US response was in contravention of the Vienna convention on diplomatic relations. It was neither known nor recognized by international law but perhaps dictated by morality.[xxii]

Morality finds itself on the offensive in the administration of sanctions in respect of obligations required of all states by international law. Respect of human rights is one of the obligations. Consequently state(s) that violate the human rights of her citizens are open to sanctions.

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However, in practice the international community's responses to grave violations of human rights that "shock the human conscience" have taken the form of military intervention in the internal affairs of such sovereign states violating human rights of citizens.[xxiii]By the fact of the involvement of military intervention, many states have shown a great level of aversion for interference in other states action involving human rights violation as internal affairs of the given state; provided such human rights violations are against its own nationals which do not prejudice other states national interest. The desire to act only where a sanctioning authority's' national interest is at stake, irrespective of whether or not the given action or conduct "shocks the human conscience," puts morality at a crossroad with legality. This interplay between morality and legality in sanction administration in this regard makes it difficult to concisely apportion morality as the motivation for a sanctioning authority's action against a target state. Meanwhile, the interplay between morality and law as regards choice of sanctions and implementation is known to be contingent on extraneous considerations that are selfish to the sanctioning authority. Sanctions were administered in condemnation of the then apartheid system of government in Rhodesia and South Africa; conflict in Bosnia; conflict in Serbia-Montenegro; civil war in former Yugoslavia, but was never administered in condemnation of Canadian treatment of the *Haudenosaunee* peoples of Canada,[xxiv] Botswana treatment of the *San*, and *Nama/Khoe* peoples of Botswana,[xxv] to the Asad regime in her war against Syrian citizens,[xxvi] or Nigeria against its human rights atrocities against the Igbos during the Biafran war; and even Federal government support for Fulani herdsmen atrocious killing of farmers and ordinary citizens in Nigerian.

SANCTIONS AS FOREIGN POLICY TOOL

While the value of sanctions as foreign policy tool is not in doubt, it is highly contentious as to whether they succeed in their quest to change target states and non-state actors' conducts. The contention stems from a range of issues such as - the perception that sanctions are poorly conceived through the behaviours of the sanctioning authority.

The perception that sanctions are poorly conceived: UN backed sanctions have sometimes been undermined by competing interest of world powers. The result is that administration of sanctions has become divisive. Even in times where the international community is in

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agreement as to the need for sanction against an erring government, one super powers' veto makes a joke of the entire exercise.[xxvii] Since 2011, many UNSC Resolutions dealing with the Syrian crises has been frustrated by Russia and China's exercise of veto. Consequently, President Bashar al-Assad has continued to oppress his own citizens and denigrate his state to the consternation of the entire humanity.

In response to 9/11 attacks on the US, the US has in concert with her allies launched an all-out war against terrorist organization and their sponsors. The choice action has been to disrupt the financial infrastructure supporting terrorist. By virtue of Executive Order 13224,[xxviii] the US Treasury Department became empowered to freeze the assets and financial transactions of persons and institutions suspected of providing support for terrorist and other international criminals. Similarly, the USA Patriot Act of 26th October 2001[xxix] empowered the US Treasury Board to, on reasonable suspicion, designate foreign financial institutions as "primary money laundering concerns."[xxx]Riding on the financial significance of New York and the US Dollar to the global financial system, the US earned huge sums of money as penalty for sanction violations while the affected entities suffer loss of huge sums of money in fines, loss of business and damage to their reputation.[xxxi] The crippling effect of these sanction as exemplified by Banco Delta Asia[xxxii] financial shock, the disregard; the sanctions have for other super powers such as France, Britain, China, Russia; as well as other developed states such as North Korea are supporting the perception that the sanctions are poorly conceived in favour of the US.

Other issues in this regard include the fact that sanctions denigrate sovereign states' right to development as provided by Article 22 of the African Charter on Human and Peoples' Rights;[xxxiii] and the 1986 UN Declaration on the Right to Development.[xxxiv] Sanctions also denigrate sovereign states right to self-defence as guaranteed by the UN Charter. Further issues arise from the cultural relativists; (mainly Asian powers) perception of sanctions as promoting and protecting social, political, economic, as well as cultural values of countries of the west in disregard to the difference in development stages and or difference in historical traditions and cultural backgrounds.

By its interest in restricting the economic activities of governments and their nationals, extraterritorial sanctions,[xxxv] which are state specific (one or more states targeting a third state), are compelling governments to consider non UN sanctions (often not global in nature) as a

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violation of the sovereignty of the target state and a breach of international law. For instance, in condemnation of the US prosecution and fines levied against BNP Paribas, the French government had hinted that such would have negative consequence for US - EU relations, as well as opined that the US manipulation of Global Dollar use should motivate the EU to advance the use of Euro as a currency for international trade.[xxxvi] Consequently, when the US withdrew from the 2015 Joint Comprehensive Plan of Action with a promise to reinstate extraterritorial sanctions on European firms doing business with Iran, the EU quickly created a "Special Purpose Vehicle" that enabled European firms avoid the US sanction regime and trade with Iran.[xxxvii]

Unilateral sanctions are seen by target states as war between the sanctioning state and the target state. So they may instead attract retaliatory sanctions as was the case with the Ukraine sanction against Russian for her March 2014 annexation of Crimea.[xxxviii]They sometimes weep up sentiment in favour of the target state as was the case in the EU disregard for US sanctions against Iran.

The law of unintended consequences sometimes plays out in the administration of unilateral sanctions that involve blockade of export to targets states. Whereas such sanctions may occasion totalitarianism and encourage extremism in target states, the sanctioning states economy may be negatively affected due to production and job losses, increases in costs to consumers and businesses as target states become unable to purchase goods, or look elsewhere for supplies - depending on the target states economic reliance on imports from the sanctioning state.[xxxix]

Behaviour of the sanctioning state: the US is about the biggest state with respect to imposition of sanction as well as by the number of sanctions it has championed, imposed or vetoed at the UN Security Council. The sanctions it champions are deemed part of the US agenda on counter terrorism in revenge to the 11th September, 2001 terrorist attack on the US, the US war on drug trafficking, it could as well be applied to satisfy its ego. The US sanctions perceived to be ego trips include US sanctions against North Korea for her nuclear program. Also within this sphere is the US sanctions against Russia for her threats to Ukraine which offends both morality and legality because the US has comparatively similar relationship with Cuba. The US therefore, lacked the novel justification to complain against similar conducts.

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The US sanctions against Iran tends towards the US desire to protect her allies in the Middle East as well as to ensure some level of equilibrium in the balance of power in that region. But that is deficient in moral and legal justifications as the US has similar irregularities in her relationship with states such as Nicaragua,[xl] Vietnam, Venezuela, Cuba etc. The US is also known to exploit the weak sanction administration capacity of the UN - credited to non-existence of independent UN Police, reliance on member states (many of which lack the much needed resources as well as no or little political interest to prosecute noncompliance) for enforcement of international law.

UNTANGLING THE KNOT FOR SUCCESSFUL SANCTIONS ADMINISTRATION

Many instances of administration of sanctions have been and seen characterized and seen as a mere absurdity. A single state imposing sanctions on another for perceived offences, other states may not consider offence; unconventional responses, responding without the consent of the UN first had and obtained; imposing sanctions on states doing business with a target state (secondary sanction); deriving economic benefit from sanctions; imposing sanctions for non-norm violation; etc. These instances have morality and legality at loggerheads.

Similarly, the use of veto powers, the north and south polarities in international affairs, superpowers and other permanent members of the Security Council's protectionism tendencies when sanctions have to do with them, their friends and allies greatly limit agreements on norm violation[xli] and sanction design and administration - and that has become the albatross of sanctions. However, to avoid morality and legality locking horns for the purpose of guaranteeing the continued usefulness of sanctions as foreign policy tools and an instrument of international law in response to international norm contravention, identified knots must be untangled.

In the first place, penalties for norm violation must relate to norms or rules.[xlii] In other words, sanctions must relate to norms contravention and stick to acceptable rules and standards of international law applicable in similar circumstances. This was the case with the League of

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Nations Covenant which prescribed sanctions as automatic response to a breach of its rules, and required members to immediately sever all relations with a target state.[xliii]

Similarly, sanctions should have some pre identified authorization base to retain the character of legal penalties.[xliv] That power of authorization of sanction (to meet a threat to or a breach of the peace or in response to an act of aggression) that resides in the UN Security Council[xlv] subject however to the agreement of all permanent members and at least four non-permanent members of the Security Council[xlvi] must be respected. And member states, as required, must be willing to carry out the UNSC decisions as regards sanction administration.[xlvii]

Although UNGA Resolutions do not have the force of law, where the UNGA at its annual or emergency meetings, in condemnation of norm violations, recommends sanctions and obtains approval of by 2/3 majority of members[xlviii] or such is unopposed, it should be considered as imposing moral duty on member states to act in accordance with their decisions,[xlix] - or at least help in declaring such a target state a pariah state.

Extended sanctions must be avoided. The hardships they bring on the generality of citizenry of the target state, and their spill over effect on innocent neighbouring states often questions the morality of sanctions. Meanwhile, extended sanctions are known to provide target states the opportunity to devise and implement strategies to circumvent or tolerate the intended effect of a given sanction,[l] including building up defences.[li]

The engagement of regional bodies in sanction administration (under the guise of freedom to define and defend regional norms) owing to the usual deadlock at the UNSC needs to be reconsidered. It has not been effective. For instance, the 1964 Organization of American States (OAS) sanctions against Cuba[lii]was lifted in 1975 because it was discovered that it did neither weaken the Fidel Castro's government nor prevent Cuba from providing military support for Marxist-Leninist regimes as far off as Africa.

Self-help defeats the essence of the international community as a responsible social group. Albeit, blamed on the reluctance of the UN to act in certain occasions which has been canvassed as the reason for adoption of self-help when international norms are breached. However, in

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pursuit of self-help, allies and friends of the injured party have deliberately paraded "punitive measures" as "sanctions."

This trend dilutes the meaning and import of sanction in international law by vesting "measures" with the aura of authority that belongs to "sanction." While this tends to blur the line between measures and sanctions, it also provides an excuse for unlawful injurious state behaviour that are carried out as foreign policy[liii] or in respect of international norms breach. For example, the US imposed measures[liv] against the USSR for Soviet military intervention in Afghanistan in December 1979 in disapproval of the USSR extension of Soviet power outside of its East European sphere of influence - which the US and her allies considered an unwelcome development. Similarly, Britain responded to the 2nd April, 1982 Argentine forceful seizure of the Falkland Islands (a British dependency) by unilaterally proclaiming a 200mile exclusion zone around the islands, imposing non-military measures against Argentina that included freezing of Argentine assets in Britain, embargoes on trade and financial transactions with Argentina, and dispatch of a naval task force to the South Atlantic.[lv] This US and Britain application of those measures amounts to self-help which international law forbids; because of its tendency to encourage escalation of breach of peace or war.

The UN has shown grave inconsistency and reluctance as regards establishing authority over determination of norm violation and administration of appropriate sanction. In practice, it is only in crisis situations were no superpowers or their allies is suspected as an aggressor/offender that UNSC resolutions in condemnation are produced. Where superpowers or their allies are suspected as aggressor, offender, or wrongdoer, the UNSC responses have not been faithful in keeping to Chapter VII of the UN Charter's enforcement procedure. So the UNSCs response to the Falklands crisis, where Britain was sported as a possible wrongdoer, was a proclamation that breach of the peace had occurred, but there were no accompanying calls for sanctions. This approach is catastrophic as it further questions the morality and legality of sanction administration on many states.

The discrimination that has characterized international community's responses to norm violation is a moral dent on administration of sanction as a legal process. The UN ought to provide an authoritative framework for sanction administration as it did for norm formation. Ad hoc and selective responses (including the administration of economic sanction as less

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lethal option to military intervention)to norm violation has not produced impressive outcomes. It has in fact been counterproductive. The Arab oil embargoes of 1973 and 974, freezing of Iran assets, forcing Poland or Argentina into massive defaults on foreign loans did not essentially change their behaviours.[lvi] Meanwhile, backlash and ripple effects casts aspersion on and further questions the morality and legality of certain sanctions administered on some states.

Branding unilateral or non UN authorized retaliatory measures taken against wrongdoings as sanctions or the use of "secondary sanctions"[lvii] damages any claims of taking such actions in support of principles of International law. They amount to weaponization of sanctions and are also detrimental to the use of sanction as a moral and legal response for norm violation.

Granted that the idea behind secondary sanctions i.e. prohibition of third states from maintaining economic relations with the target state, is to erase opportunities that would undermining the primary sanctions.[lviii]

But by the fact of limiting third states' sovereign right to freely conduct their external economic relations with other states, creation of private enforcement rights over supposed international norm violation,[lix]and its extraterritorial application,[lx] they contravene morality, legality and legitimacy of sanctions and so offend international law as well as elicit retaliatory responses.[lxi]

Meanwhile, secondary sanctions violate the international law principle of non-intervention, the principle (or prohibition) of abuse of rights (*abus de droit*),[lxii] and the principle of jurisdictional reasonableness.[lxiii]

CONCLUSION

By the fact of the unpleasantness (physical or mental) of sanction,[lxiv] in the administration of sanction, effort must be made to avoid easy identification of a state as the initiator as such often sets out the state as the "aggressor." Sanctions must be positioned as appropriate collective

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responses to norm violation. The point is that, mankind has no uniformity in morality. So administering sanctions in the enforcement of international law on the bases of morality make it easier to utilize sanctions for evil purposes; and makes it very difficult to distinguish law aggression from sanction.[lxv] To retain its usefulness, administration of sanctions must therefore remain the exclusive prerogative of the international law originator, the UN, and not any or all volunteers. So there is no escape for centralization of authority in the administration of sanction, if it must retain its usefulness in international affairs.

The involvement of many states escalates the necessary political pressure that compels the target states to conform to international law,[lxvi] therefore multilateral sanctions involving the UNSC have better success rates regardless of the constrains posed by the length of time it takes the UN Security Council to mobilize, legislate and implement sanctions.

Although sanctions administration demonstrates the contestations between morality and legality that have let sanctions remain mired in controversy, the tweak is that sanctions are still preferable to doing nothing in the face of massive human rights abuses and many other threats to international peace and security.

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[ii] See Chad Flanders, Shame and the Meanings of Punishment, 54 CLEV. ST. Law Review. 609, 610 (2006).

[iii] Examples include UN sanctions against apartheid South Africa, Zimbabwe, Iraq (1990 - 2003)

[iv] Please note of the existence of slight difference between economic sanctions and trade sanctions.

[v] Such was applied against the Federal Republic of Yugoslavia 1992 - 1995 - See UNSC Resolution 757; See also the 1977 Gleneagles Agreement through which the Commonwealth committed members to discourage all forms of competition and contacts of their sportsmen / women and sporting organizations with individuals and teams belonging to South Africa.

[vi] See Sandeep Gopalan, Alternative sanctions and social norms in international law: the case of Abu Ghraib [2007] Michigan State Law Review, Vol. 2007:785

[vii] Ibid

[viii] See Chad Flanders op cit.

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[xii] UN Resolution 661 of August 1990 placed embargo on Iraq to prevent armed conflict. Resolutions 665 and 670 imposed naval and air blockade on Iraq.

[xiii] The UNSC Resolution 1929 provided restrictions aimed at restricting from the reach of Iran materials that can be used to produce missiles and other destructive weapons that can eventually be used for acts of aggression that would threaten the peace by upsetting the balance of power in their region.

[xiv] The UNSC military, economic (including oil and petroleum products) blockade sanction against Rhodesia was in condemned of the declaration of Independence of Rhodesia by white minority on 11th November 1965.

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[xvi] Ibid

[xvii] Ibid

[xviii] Force have been defined to include coercion or compulsion, especially with the use or threat of violence; mental or moral strength or power - See https://www.google.com/search?client=firefox-b-d&ei=8GQsYMjTJrCelwTpzaHwCw&q=force+meaning&oq=force+&gs_lcp=Cgdnd3Mtd2l6EAEYBTIICAAQsQMQkQIyBQgAEJECMgUIABCxAzICCAAyAgguMgIIADICCAAyAggAMgIIADICCAA6BwgAEEcQsAM6CAghEBYQHRAeOgYIABAWEB5QwvANWMGMDmCbrg5oAXACeAGAAc8DiAGIH5IBBzItNi4zLjOYAQCgAQGqAQdnd3Mtd2l6yAEIwAEB&sclient=gws-wiz

[xix] See Herman Kahn, On Escalation: Metaphors and Scenarios (New York: Frederick A. Praeger, Publishers, 1965)

[xx] See D'Amato, Anthony, The Moral and Legal Basis for Sanctions (2010) op cit

[xxi] See the use of a multipurpose vehicle by EU States to circumvent The US sanctions on Iraq

[xxii] Other unilateral sanctions with similar circumstances include the US sanctions against states or corporations they suspect aided the 9/11 terrorist attack on New York, or provide support for other terrorists and other international criminals.

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[xxiii] See 11th April 1979 Tanzanian military intervention in Uganda that lead to the ousting of Idi Amin; and the 1999 NATO military intervention in Kosovo to stop the killing (ethnic cleansing) of Albanians by Yugoslavia.

[xxiv] Jeff Corntassel, Toward Sustainable Self-Determination: Rethinking the Contemporary Indigenous-Rights Discourse, [2008]*Alternatives 33*

[xxv] Ibid

[xxvi] Noted the objection of Russia and China in obtaining UNSC sanction against Assad

[xxvii] See the 1995 NATO military intervention in Bosnia and Herzegovina that could not get UNSC express approval because of Russia and China indication of exercise of veto.

[xxviii] Signed by President George W. Bush on 23rdSeptember, 1991

[xxix] Section 311

[xxx] "When are sanctions used?" Daily News Brief: A summary of global news developments with CFR analysis delivered to your inbox each morning. https://cfr.org

[xxxi] In 2014, France's largest lender, BNP Paribas's pleaded guilty to allegations of processing billions of dollars for blacklisted Cuban, Iranian, and Sudanese entities so paid out nearly $9 billion (financial penalties of $8.9736 billion, including forfeiture of $8.8336 billion and a fine of $140 million) in fine, as well as lost the right to convert foreign currency into dollars for some designated types of transactions, for one year - See "BNP Paribas Agrees To Plead Guilty To Conspiring To Process Transactions Through The U.S. Financial System For Sudanese, Iranian, And Cuban Entities Subject To U.S. Economic Sanctions" Press release (no. 14-194) by the Department of Justice, U.S. Attorney's Office, Southern District of New York, Monday, 30th June, 2014. Other banks that have suffered similar fate include Societe Generale - France 2018 $148; Credit Agricole - France 2015 $787M; Standard Chartered UK 2012 $667M, 2019 $639M; ING Netherlands 2012 $619M; Unicrdit Bank AG Germany 2009 $553M; ZTE China 2017 $101M etc. see "Major US sanction violation cases, 2009 – 2019" US department of justice, US treasury Department: NY department of financial services, Financial Times: Wall Street Journal: Royal Bank of Scotland; Reuters. Council for foreign relations https:///www.cfr.org

[xxxii] The US declaration of Banco Delta Asia (BDA) as a primary money laundering concern based on BDA's relationship with North Korean government saw the bank customers withdraw $133 million i.e. about 34% of the bank's deposits within a week leading to crash of the bank - See "Treasury Designates Banco Delta Asia as Primary Money Laundering Concern under USA PATRIOT Act" US Department of the Treasury, press release (No JS-2720) of 15th September 2005

[xxxiii] Article 22(122) provides that: "All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.

[xxxiv] See the UN General Assembly Resolution 41/128 and the 1993 Vienna Declaration and Program of Action.

[xxxv] Also called secondary sanctions

[xxxvi] French Finance Minister Michel Sapin

[xxxvii] See Joint statement on the creation of INSTEX, the Special Purpose Vehicle aimed at facilitating legitimate trade with Iran in the framework of the efforts to preserve the Joint Comprehensive Plan of Action (JCPOA) (31st January 2019). https://www.diplomatie.gouv.fr/en/country-files/iran/news/article/joint-statement-on-the-creation-of-instex-the-special-purpose-vehicle-aimed-at (retrieved 2nd February 2021)

[xxxviii] Russia responded to Ukraine's September 2015 announced ban of Russian planes from Ukraine's soil by threatening to retaliate Ukraine's ban. See "How Economic Sanctions Work" https://www.investopedia.com/articles/economics/10/economic-sanctions.asp(retrieved 2nd February 2021)

[xxxix] For example, the Organization of Arab Petroleum-Exporting Countries (OAPEC) embargo on oil shipments to the US in 1973 aimed at punishing the US for re-supplying Israel with arms did not result in the policy change envisioned by OAPEC. Unfortunately, it exacerbated the worldwide stock market crash of 1973-74 - see https://www.investopedia.com/features/crashes/; and the increase in inflow from higher oil prices resulted in an arms race in Middle East (retrieved 2nd February 2021)

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[xl] Who the US indicted for Nonproliferation, Rough Diamond Trade, and Transnational Criminal Organization

[xli] Margaret Doxey, International Sanctions in Theory and Practice, [1983] Vol. 15, Issue 2 Case Western Reserve Journal of International Law, 273 Available at: https://scholarlycommons.law.case.edu/jil/vol15/iss2/5, p274(retrieved 2nd February 2021)

[xlii] Ibid

[xliii] See Articles12, 13 & 15 of the League of Nations Covenant

[xliv] Margaret Doxey, International Sanctions in Theory and Practice, op cit

[xlv] Article 39 of the UN Charter

[xlvi] Article 27 of the UN Charter

[xlvii] Article 2 of the UN Charter

[xlviii] See the Uniting for Peace Resolution, G.A. Res. 377(V), 7 U.N. GAOR Supp. (No. 20) at 10, U.N. Doc.. A/1775 (1950), p 11

[xlix] See Bowett, Economic Coercion and Reprisals by States, [1972] 13 VA. Journal of International Law, 1

[l] Example is often given of the impact of the UN Sanction on the Ian Smith's government of Rhodesia and its costs to Zambia –see Margaret Doxey, International Sanctions in Theory and Practice, op cit

[li] See South African reaction to the repeated condemnation of South Africa by the UN General Assembly

[lii] A 1962 OAS declaration had prescribed the exclusion of Marxist-Leninist government from being of the Inter-American systems, so it prescribed a diplomatic and trade sanctions against Cuba.

[liii] See for example the US measures penalizing Iran for seizure of 52 hostages from the US Embassy in Tehran by Iranian militants on 4thNovember, 1979. Here the measures adopted as sanctions include freezing of Iranian assets and their inventorization with a view to possible confiscation; ban on imports of Iranian oil, ban on all imports and exports to and fro Iran (with the exception of food and medicine); withdrawal of Iranian visas; a ban on travel to Iran; and the severance of diplomatic relations. See Margaret Doxey, International Sanctions in Theory and Practice, op cit.

[liv] Limited grain embargo, a proposed ban on participation in the Moscow Summer Olympics, withdrawal of Soviet fishing privileges in U.S. waters and a ban on the export to the U.S.S.R. of high technology

[lv] Argentina, in return, imposed an unsuccessful counter-measures against Britain.

[lvi] See Carswell, Economic Sanctions and the Iranian Experience, [1981 - 82] 60 Foreign Affairs 247-65.

[lvii] These are 'retaliatory' sanctions that 'do not involve monetary penalties, but rather seek to cut off foreign parties from access to the US financial and commercial markets if they conduct business in a manner considered detrimental to US foreign policy' - see M Rathbone, P Jeydel, and A Lentz, Sanctions, Sanctions Everywhere: Forging a Path through Complex Transnational Sanctions Laws' [2013] 44 Georgetown Journal of International Law 1055, 1112–13

[lviii] Rathbone, Jeydel, and Lentz , 'Sanctions, Sanctions Everywhere' ibid

[lix] See The Helms-Burton Act's which created far-reaching private enforcement rights, which threatened investments in Cuba by EU Member States

[lx] See the Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996 (Helms–Burton Act), which imposes secondary sanctions on non-US persons trading with Cuba

[lxi] See C Van Haute, S Nordin, and G Forwood, The Reincarnation of the EU Blocking Regulation: Putting European Companies Between a Rock and a Hard Place [2018] 13 Global Trade and Customs Journal 496.In reaction to the Helms-Burton Act's which created private enforcement right that threatened EU Member States investments in Cuba, the EU adopted the EU Blocking Statute of 1996, which 'blocks' the enforcement in the EU of US secondary sanctions and features its own private right of action ('clawback') for EU persons suffering damage as a result of another's compliance with US sanctions - see article 6 of 1996 EU Blocking Statute; there were some individual states responses e.g. the UK - The Extraterritorial US Legislation (Sanctions against Cuba, Iran and Libya) (Protection of Trading Interests) Order 1996, SI 1996/3171; Canada - Foreign Extraterritorial Measures Act, RSC 1985, c F-29; The Foreign Extraterritorial Measures (United States) Order (1996) SOR/96-84; and Mexico - *Ley de Proteccio´n al Commercio y la Inversio´n de Normas Extranjeras que Contravengan el Derecho Internacional* (23rd October 1996). The US was thereby compelled to reach an agreement at the WTO in 1997 suspending Title III of the Act until

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2019 - President Trump allowed the suspension of Title III to lapse in 2019, apparently to punish Cuba for its support of the regime in Venezuela - see N Ga´mez Torres, 'U.S. Swats Cuba for Role in Venezuela by Moving closer to Fully Implementing Helms-Burton' Miami Herald (3rd April 2019) <www.miamiherald.com/latest-news/ article228735334.html>

[lxii] A Kiss, 'Abuse of Rights', MPEPIL Online (last updated December 2006) para 6.

[lxiii] On reasonableness, see C Ryngaert, Jurisdiction in International Law (2nd edn, OUP 2015) Chapter 5; C Ryngaert and M Vagias (eds), Jurisdictional Reasonableness' [2019] 62 Questions of International Law. Some US secondary sanctions are in breach of US obligations vis-a`-vis the EU under the WTO Agreements - See, e.g. Council of the EU, 'Declaration by the High Representative on behalf of the EU on the full activation of the Helms-Burton (LIBERTAD) Act by the United States' (2nd May 2019) <www.consilium.europa.eu/en/press/press-releases/2019/05/02/declaration-by-the-high-representative-on-behalf-of-the-eu-on-the-full-activation-of-the-helms-burton-libertad-act-by-the-unitedstates/>; EU External Action Service, 'Joint Statement by Federica Mogherini and Cecilia Malmstro¨m on the decision of the United States to further activate Title III of the Helm Burton (Libertad) Act' (17th April 2019) <https://eeas.europa.eu/headquarters/headquarters-homepage/61183/joint-statement-federica-mogherini-and-ecilia-malmstr%C3%B6m-decision-united-statesfurther_en>; see also article VIII(2)(a) of the IMF Articles of Agreement; and article I GATT.

[lxiv] More often than not sanctions imposed on a state affect those citizens that are already being oppressed by their governments; and for whose protection, the sanction may have been imposed in the first instance, the more

[lxv] See D'Amato, Anthony, The Moral and Legal Basis for Sanctions [2010], op cit.

[lxvi] Even a rumor of UN action is often enough to spark potential targets to move or hide their assets or begin to produce false companies, passports and bank records in order to circumvent the impact of sanctions - see George A. Lopez, UN Sanctions as a Tool for Preventing Atrocities, In Mass Atrocities, Sanctions and Security [2018] May 17. https://peacepolicy.nd.edu/2018/05/17/un-sanctions-as-a-tool-for-preventing-atrocities/ (last accessed 10th February 2021)

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